# Petition

81-1391

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IN THE
**Supreme Court of the United States**

OCTOBER TERM, 1981

THREE J FARMS, INC., SHAPIRO & SON BEDSPREAD CORP., LONDON DRY LTD., SOUTH CAROLINA PEACH GROWERS ASSOCIATION, U.S. TEXTILE CORP., TROY H. CRIBB & SONS, INC. and TABOR CITY FOODS, INC.,

*Petitioners,*

-against-

PLAINTIFFS' STEERING COMMITTEE, SETTLING DEFENDANTS and NON-SETTLING DEFENDANTS IN CORRUGATED CONTAINER ANTI TRUST LITIGATION,

*Respondents.*

**PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT**

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## QUESTIONS PRESENTED FOR REVIEW

1. Where State Claims are not presented by the Class Representatives in a Federal Class Action, but are brought by Class Members in a State Action and where the jurisdiction of the Federal Court to consider such State Claims is pendent only does a Federal District Court have the right to enjoin the State Plaintiffs from litigating their claims in a State Court.

2. Where State Proceedings are pending in a State Court does a Federal Court have a right to enjoin such State Proceedings on the alleged ground that they, in some way, "interfere" with the Federal Proceedings under way where the "Anti Injunction Act" prevents such activity.

3. Where a State Court has specifically enjoined parties from disposing of State Claims as part of a settlement of Federal Litigation where the State Claims were not pleaded in the Federal Litigation, can the Federal Court issue an injunction to nullify the process of the State Court under the Tenth Amendment to the Constitution of the United States.

4. Where the Federal Litigation settlement did not encompass claims for indirect purchasers does a Federal Court have the right to enjoin such litigation in a State Court.

5. Certiorari is required to be granted in this case because of conflicts between the decision of the Fifth Circuit in this case and conflicting decisions of the Second Circuit, the Seventh Circuit and the Ninth Circuit.

6. The present injunction issued against the petitioners has so far departed from the decisional law previously enunciated by this Court as to require this Court's supervisional intervention.

## TABLE OF CONTENTS


| *Item* | *Page* |
|---|---|
| Questions Presented For Review | i |
| List of Parties to this proceeding | ii |
| Table of Contents | iii |
| Table of Cases and Other Authorities | v |
| Opinions of the Courts Below | 2 |
| Grounds upon which the jurisdiction of this Court is invoked. | 2 |
| Statement of the Case | 2 |
| Reasons why this petition should be granted. | 5 |
| POINT ONE—Where State Claims Are Not Presented By The Class Representatives In A Federal Class Action But Are Brought By Class Members In A State Action, And Where The Jurisdiction Of The Federal Court To Consider Such State Claims Is Pendent Only, Does A Federal District Court Have The Right To Enjoin The State Plaintiffs From Litigating Their Claims In A State Court | 7 |
| POINT TWO—Where State Proceedings Are Pending In A State Court Does A Federal Court Have A Right To Enjoin Such Proceedings On The Alleged Ground That They, In Some Way, "Interfere" With The Federal Proceedings Under Way Where The "Anti-Injunction Act" Prevents Such Activity. | 12 |

POINT THREE—Where A State Court Has Specifically Enjoined Parties From Disposing Of State Claims As Part Of A Settlement Of Federal Litigation Where The State Claims Were Not Pleaded In The Federal Litigation, Can The Federal Court Issue An Injunction To Nullify The Process Of The State Court Under The Tenth Amendment To The Constitution Of The United States. ..... 16

POINT FOUR—Where The Federal Litigation Settlement Did Not Encompass Claims For Indirect Purchasers Does A Federal Court Have A Right To Enjoin Such Litigation In A State Court. ..... 18

POINT FIVE—Certiorari Is Required To Be Granted In This Case Because Of Conflicts Betweeen The Decisions Of The Fifth Circuit And Conflicting Decisions Of the Second Circuit, The Seventh Circuit And The Ninth Circuit ..... 19

POINT SIX—The Present Injunction Issued Against The Petitioners Has So Far Departed From The Decisional Law Previously Enunciated By This Court As to Require This Court's Supervisional Intervention. .. 20

CONCLUSION—A Writ Of Certiorari To The United States Court Of Appeals For The Fifth Circuit Should Be In All Respects Granted ..... 21

## TABLE OF CASES


| *Case Cited* | *Page* |
|---|---|
| *Atlantic Coast Line RR Co. vs. Brotherhood of Locomotive Engineers,* 398 US 281 | 16 |
| *Bibb vs. Navajo Freight Lines, Inc.,* 359 US 519 | 15 |
| *Blouin vs. Dembitz,* 367 Fed. Supp. 415, aff'd 489 Fed. 2nd 488 | 17 |
| *Brown vs. McCormick,* 608 Fed. 2nd 410 | 10 |
| *Browning Debenture Holders Committee vs. DASA Corp.,* 2 Cir., 605 F. 2nd 35 | 10 |
| *Chaffee vs. Johnson,* 229 Fed. Supp. 445, aff'd 352 Fed. 2nd 415, cert. den. 384 US 956, 86 Sup. Ct. 1582, 16 L.Ed. 2nd 553 | 17 |
| *Cloverleaf Butter Co. vs. Patterson,* 315 US 158 | 15 |
| *Exxon Corporation vs. Governor of Maryland,* 437 US 177 | 15 |
| *Federated Department Stores vs. Moitie,* No. 79-1517 decided March 30, 1981 (not yet officially reported) | 6,14 |
| *Hughes Construction Company vs. Rheem Manufacturing Co.* (ND Miss 1980) 458 Fed. Supp. 345 | 14 |
| *Illinois Brick vs. Illinois,* 431 US 720 | 18 |
| *In Re General Motors Engine Interchange Litigation,* 7 Cir. 1979, 594 F. 2nd 1106 | 13 |

*Jones vs. Rath Packing Co.*, 430 US 519 ..... 15

*Lambert Run Coal Co. vs. B & O RR Co.*, 258 US 377, 42 Sup.Ct. 349, 66 L. Ed. 671 ..... 14

*Meridan Investing and Development Corp. vs. Sun Coast Highland Corp.*, 5 Cir., 628 F. 2nd 370 ..... 10

*Mitchum vs. Foster*, 407 US 225 ..... 16

*National Super Spuds vs. New York Mercantile Exchange*, 2 Cir. 1981, 660 F. 2nd 9 ..... 13,19

*Nationwide Mutual Insurance Co. vs. Vaage*, 265 Fed. Supp. 556 ..... 17

*NLRB vs. Jones & Laughlin Steel Corp.*, 301 US 1, 57 Sup. Ct. 615, 81 L Ed. 893 ..... 17

*Nevada vs. King*, 463 Fed. Supp. 749 ..... 14

*People vs. Glendale Savings & Loan Ass'n*, 475 Fed. supp. 728 ..... 14

*Proctor & Gamble Company vs. City of Chicago*, 609 Fed. 2nd 69 ..... 15

*Pure Milk Products Cooperative vs. National Farmers' Association*, 332 Fed. Supp. 866 ..... 14

*Santa Fe Industries vs. Green*, 430 US 462, 97 S.Ct. 1292, 51 L.Ed. (2nd 480) ..... 9

*Smith vs. Apple*, 264 US 274 ..... 16

*Southern California Petroleum Corporation vs. Harper,* 273 Fed. 2nd 715 ..... 16

*State of California vs. California & Hawaiian Sugar Company,* 588 Fed. 2nd 1270 (1978) ..... 15

*State of Connecticut vs. Levi Strauss & Company,* Trade Cases 1979-1, Par. 62,672 ..... 15

*State of Washington vs. American League of Professional Baseball Clubs,* 460 Fed. 2nd 654 (1972) ..... 14

*Standard Oil vs. Tennessee,* 217 US 413 ..... 15

*Toucey vs. New York Life Insurance Co.,* 314 US 118 .. 16

*United Mine Workers vs. Gibbs,* 383 US 715 ..... 9

*U.S. vs. Kuehn,* 7 Cir. 562 Fed. 2nd 427 ..... 10

*Vendo Corp. vs. Lektro-Vend Corp.,* 433 US 623 ..... 15

*Wilson vs. Thompson,* 5 Cir. 593 Fed. 2nd 1375 ..... 10

## CONSTITUTIONAL AND STATUTORY PROVISIONS

Fifth Amendment, Constitution of the United States. 21

Tenth Amendment, Constitution of the United States 21

28 USC 1651 (The All Writs Act) ..... 12

28 USC 2283 (The Anti-Injunction Act) ..... 12,21

Section 39-3-30 of the South Carolina Code ..... 11

## INDEX TO APPENDIX


| *Item* | *Page* |
|---|---|
| Pretrial Order No. 32 of the United States District Court for the Southern District of Texas containing the Injunction appealed from herein. | 1a |
| Opinion of the United States Court of Appeals of the Fifth Circuit affirming the grant of injunction | 8a |
| Fifth Amendment to the Constitution of the United States | 16a |
| Tenth Amendment to the Constitution of the United States | 16a |
| All Writs Act 28 USC 1651 | 17a |
| Anti-Injunction Act 28 USC 2283 | 17a |
| South Carolina Anti-Trust Act Section 39-3-30 of the South Carolina Code | 17a |

IN THE
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October Term 1981

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THREE J FARMS, INC., SHAPIRO & SON BEDSPREAD CORP., LONDON DRY LTD., SOUTH CAROLINA PEACH GROWERS ASSOCIATION, U.S. TEXTILE CORP., TROY H. CRIBB & SONS, INC. and TABOR CITY FOODS, INC.,

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*Respondents.*

---

**PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT**

Petitioners herein petition this Court for a Writ of Certiorari to review the determination of the United States Court of Appeals for the Fifth Circuit which was rendered on October 29th, 1981 and which affirmed the grant of an injunction against the petitioners here from prosecuting their claims under the Anti-Trust Laws of the State of South Carolina despite the grant of a prior injunction by the Circuit Court of the County of Spartanburg (South Carolina) in direct conflict with the position of the District Court. All criteria for review of this determination by this Court exist as will be set forth hereinafter in this Petition.

## OPINIONS OF THE COURTS BELOW

See appendix.

## GROUNDS UPON WHICH THE JURISDICTION OF THIS COURT IS INVOKED

Jurisdiction of this Court arises as follows:

a. The Judgment sought to be reviewed herein was entered by the United States Court of Appeals for the Fifth Circuit on October 29th, 1981. The 90 day period for filing the instant petition for review will expire on January 27, 1982 (since October and December are 31 day months). (28 USC 2101(c)).

b. No application for rehearing was filed by the petitioners.

c. The statutory provision required conferring jurisdiction on this Court is 28 USC 1254(1). The review of a determination by a Court of Appeals by certiorari is set forth in that section. The original jurisdiction of the Federal Court was invoked by the plaintiffs under 28 USC 1337.

## STATEMENT OF THE CASE

Following an indictment by the United States filed against the principal manufacturers of corrugated containers in the United States a large number of Federal Antitrust Complaints, filed both individually and as Class Actions, were presented to District Courts in many parts of the country. These Federal Cases were eventually consolidated into a Multi-District Proceeding before District Judge Singleton in the United States District Court for the Southern District of Texas.

About the same time the petitioners Three J Farms, Inc. and Shapiro & Son Bedspread Corp. filed an antitrust

complaint in the Circuit Court of the State of South Carolina of the County of Spartanburg.

The Complaint filed by the petitioners specifically excised therefrom all Federal Claims since the petitioners desired that their rights should be determined under *State* rather than *Federal* law. The reason for this is the fact that, under the antitrust laws of the State of South Carolina a party who *may be* damaged by a price-fixing conspiracy is entitled to recover the full purchase price of the goods affected by the trust. This law, while no decision has been rendered by the State Courts of South Carolina in that regard, is believed to apply to *indirect* as well as to *direct* purchasers.

Federal Antitrust Law, of course, permits recovery only of "treble damages" and a party seeking this relief must prove that he is (1) within the "target area" of the conspiracy and (2) that he has suffered damage in connection therewith. Federal Recovery provisions are far less favorable than State provisions and this is borne out by the fact that, in the present case, after trial, a jury has fixed damages against the non-settling defendants at about 5% of the gross sales of the goods involved. Trebling this provides only a 15% recovery rather than the 100% recovery provided under South Carolina Law.

South Carolina is not the only State having such "full purchase price" statutes but such Statutes are also present in Kansas, Colorado, Tennessee, and others.

Defendants desperately attempted to remove this suit to the Federal Courts. Eventually, after the United States Court of Appeals granted mandamus, the matter was remanded to the State Courts of South Carolina.

In the meantime the parties to the Federal Lawsuit (where petitioners were not parties) decided (except for the non-settling defendants) to settle the lawsuit which contained no State Antitrust Claims whatsoever. Paren-

thetically, of course, had the plaintiff's Class Counsel pleaded State Claims they could not be Class Counsel nor could a Federal Class including State Claims be properly certified since the rights of claimants in "Full Purchase Price" states such as South Carolina are quite different from the rights of claimants in non-full purchase price states such as Texas.

Nevertheless the plaintiffs attempted to structure a settlement which would include not only Federal Claims (the claims that were pleaded and prosecuted in that action) but the State Antitrust Claims that were not pleaded.

When the petitioners discovered this plan they applied to the Circuit Court of Spartanburg County for an injunction to prevent interference with the jurisdiction of the Circuit Court of Spartanburg County to dispose of the State Claims. The State Court granted the following injunction, the defendants being enjoined from:

> "* * preparing, disseminating or utilizing any settlement documents in connection with any action pending in any Court wherein such settlement document contains any release of any antitrust claims under the laws of the State of South Carolina, without the prior approval of the (South Carolina State) Court.* * *"

Plaintiffs and defendants in the Federal Litigation ignored this injunction but proceeded to consummate the proposed settlement releasing claims under the antitrust laws of the State of South Carolina. Petitioners objected to this at the settlement hearing before the District Court but the objections were overruled. The parties to the Federal Litigation then petitioned the Federal District Court to enjoin the petitioners from proceeding with any steps to enforce their rights in South Carolina, the Federal Injunction reading as follows:

"* * the aforesaid parties, together with all their respective officers, agents, employees and attorneys, and all those acting in concert with them, are enjoined for as long as MDL 310 remains pending in this Court, from proceeding further in any manner in connection with *Three J Farms, et al. vs. Alton Box Board et al.* now pending as Civil Action No. 78-1257 in the United States District Court for the District of South Carolina, or in any manner with respect to the subject matter thereof in any court, federal or state, other than the United States District Court for the Southern District of Texas * *"

A full copy of the Court's injunction Order appears in the appendix.

Appeal was taken to the United States Court of Appeals for the Fifth Circuit and the determination of the District Court was affirmed. This petition followed.

## REASONS WHY THIS PETITION SHOULD BE GRANTED

This case involves substantial constitutional questions relating to the power of a Federal Court to enjoin State Proceedings where the State Claims, presented in the State Proceedings, are not involved in the Federal Litigation. It involves serious questions as to whether due process is violated by not giving a plaintiff a choice of forum, particularly where the forum Court will have serious *discretionary* questions to consider. It also involves every one of the criteria set forth in Rule 17 of the Rules of this Court as follows:

1. The Fifth Circuit has rendered a decision in conflict with decisions of both the Second Circuit and the Seventh Circuit on the same question.

2. The Fifth Circuit, in granting the injunction sought herein, has so far departed from the accepted and usual course of judicial proceedings, or so far sanctioned such a

departure by a lower court, as to call for an exercise of this Court's power of supervision, in particular prior decisions of this Court with respect to the scope of the Federal Court's injunctive power to stay state proceedings.

3. The Fifth Circuit has decided the present matter in conflict with prior decisions of this Court.

4. The present case involves an important question of Federal Law as to the impact, if any, upon the "commerce clause" of prosecution of State Antitrust Claims where an interstate conspiracy is involved. The matter was left in abeyance in *Federated Department Stores vs. Moitie* (No. 79-1517, decided March 30, 1981, not yet officially reported, Brennan, J. dissenting). The case has been interpreted as giving Federal Courts exclusive jurisdiction over State Antitrust Claims under their removal power which does not appear to be the thrust of that decision. However the matter requires immediate resolution.

## POINT ONE

**WHERE STATE CLAIMS ARE NOT PRESENTED BY THE CLASS REPRESENTATIVES IN A FEDERAL CLASS ACTION, BUT ARE BROUGHT BY CLASS MEMBERS IN A STATE ACTION, AND WHERE THE JURISDICTION OF THE FEDERAL COURT TO CONSIDER SUCH STATE CLAIMS IS PENDENT ONLY DOES A FEDERAL DISTRICT COURT HAVE THE RIGHT TO ENJOIN THE STATE PLAINTIFFS FROM LITIGATING THEIR CLAIMS IN A STATE COURT.**

While Class Actions serve a salutory purpose in permitting aggregation of small claims which are not great enough to permit individual litigation of these claims there have been numerous abuses of the Class Action device of which the present litigation is one. In a significant number of cases a Class Plaintiff, having Federal Claims, either does not assert related state claims in the litigation (as was done in this case) or interposes a general clause which is, in effect, meaningless, to the effect that the plaintiff is also asserting (without specificity) "all related state law and common law claims". While the plaintiffs' attorneys prosecute these cases as *Federal Claim Actions* in their settlement they provide that the parties accepting these settlements release all claims "arising out of the action" or "which were or could be asserted in the action". As a result any party prosecuting the state claims actively is, in effect, "frozen out" of the litigation.

To indicate that, in the case at Bar, South Carolina "full purchase price claims" were not considered reference is respectfully made to page 10 of the settlement hearing of December 3rd, 1979.

Q. (By Mr. Bader)

Dr. Hoyt (plaintiffs' expert witness), in your analysis of the possible damage that would be suffered by the plaintiffs, do you have any idea what percentage of sales the present settlement represents?

***

A. Yes, I do.

Q. Could you give me that figure, please?

A. It would range between three and five percent depending on which set of sales estimates of figures you use.

***

Q. Would your opinion be the same (that the present settlement was reasonable) if I told you that the statute provided that damage is for the entire purchase price of the goods instead of federal standards?

***

THE COURT: That may be South Carolina standards.

Thus, it is conceded, that in the settlement involved there was no consideration of the impact of the state "full purchase price" requirements which would have given the Class Members in states having such statutes 100% of the gross sales of the goods price-fixed.

In the action that was tried against the non-settling defendants, since state antitrust claims were not pleaded they were not tried.

What actually has occurred in this case as well as in other Federal Antitrust suits is that purported "Class Counsel" generally having clients with relatively small Federal Antitrust Claims, obtain "Class Certification" of a broad class of direct purchasers of goods and then, without having any state antitrust claims pleaded in the case, settle the lawsuit by including these claims in such settlement.

Where state laws are not more favorable than Federal Law this does not harm, but, in the case of purchasers in

"full purchase price" states such activity causes great harm to potential claimants who settle 100% claims for one or two percent without having any understanding of their state law rights.

This type of activity, unless curbed by this Court instanter, will continue to prejudice state law claimants.

The Supreme Court has repeatedly held that claims which are traditionally left to states, such as actions on state statutes, should not be tried in Federal Courts. In *Santa Fe Industries, Inc. vs. Green,* 430 US 462, 51 L. Ed (2nd) 480, 97 Sup. Ct. 1292 the Court held as follows:

> "* * A second factor in determining whether Congress intended to create a federal cause of action in these circumstances is 'whether the cause of action is one traditionally relegated to state law. * * *"

The District court and the Court of Appeals sustained the injunction granted upon the ground that the Federal District Court in Texas "could have" considered plaintiffs' claims under South Carolina State Antitrust Law. At the outset, considering the District Court's refusal to consider these claims at the settlement hearings indicates that the plaintiffs would have has short shrift at that juncture. However there is no rule of law that the undersigned has been able to find which requires a plaintiff, having a related proceeding to one brought in a Federal Court, *where the claims of the plaintiff are not pleaded in the Federal Proceeding,* to enter a Federal Forum where his State Claims will "get lost" in the primarily federal claim litigation.

The Federal District Court, of course, *if it desired to do so,* could have asserted pendent jurisdiction over the state antitrust claims had they been pleaded federally. (*United Mine Workers vs. Gibbs,* 383 US 715). However there is a serious question whether pendent jurisdiction is

available where a party desires to litigate his claims in a state forum. The Tenth Amendment would seem to come into play and a *requirement* that a party bring a state claim in a federal court where no federal claim is pleaded by him seems to be a Tenth Amendment violation and is an interference by the Federal Judiciary with State Courts.

It is important to contrast the situation involved in the case at Bar with the traditional cases where a Federal District Court will enjoin state court proceedings. Thus, for example, a party can be enjoined from instituting state proceedings to retaliate or to try to defer the exercise of federal constitutional rights by a putative adverse party, (*Wilson vs. Thompson,* 5 Cir. 593 F.2nd 1375.). A Federal Court may prevent relitigation of issues already litigated in the Federal Court by preventing a party from bringing a new state action (*Brown vs. McCormick,* 608 F.2nd 410, *Meridan Investing and Development Corp. vs. Sun Coast Highland Corp.,* 5 Cir. 628 F.2nd 370, *Browning Debenture Holders Committee vs. DASA Corp.,* 2 Cir. 605 F.2nd 35. Even in such cases, however, a defendant must show that he will suffer irreparable injury and has no adequate remedy at law (*US vs. Kuehn,* 7 Cir. 562 F.2nd 427.)

In the case at Bar all the defendants and the plaintiffs were trying to do was to settle South Carolina State Antitrust Claims without the consent of the South Carolina State Court before whom the claims were pending and after being defeated in their prior attempts to remove the case to Federal Court. The District court and the Court of Appeals have violated the most elementary principles of constitutional law.

Petitioners, both before the District Court and before the Court of Appeals, pointed out that assumption of a Federal District Court of jurisdiction over a State Law claim *where the claim had not been previously pleaded in the federal court* was a clear Fifth and Tenth Amendment violation. Under general principles of law, constitutional

points cannot be raised in this Court unless raised in the Courts below.

For the information of the Court the operative South Carolina Antitrust Statute is set forth herein. It is found at Section 39-3-30 of the South Carolina Code and reads in part as follows:

> "* * any person who may be injured or damaged by any such * * trust * * * may sue for and recover, in any court of competent jurisdiction in this state, from any person operating such trust or combination, the full consideration or sum paid by him for any goods, wares, merchandise of articles, the sale of which is controlled by said combination or trust. * * *"

In the specific situation involved in this case pendent jurisdiction would not even have been permitted because the Federal District Court involved was in Houston, Texas and the requirement of South Carolina Law is that the suit must be brought in any Court of competent jurisdiction in the State of South Carolina.

## POINT TWO

**WHERE STATE PROCEEDINGS ARE PENDING IN A STATE COURT DOES A FEDERAL COURT HAVE A RIGHT TO ENJOIN SUCH STATE PROCEEDINGS ON THE ALLEGED GROUND THAT THEY, IN SOME WAY "INTERFERE" WITH THE FEDERAL PROCEEDINGS UNDER WAY WHERE THE "ANTI INJUNCTION ACT" PREVENTS SUCH ACTIVITY.**

In considering the propriety of the present injunction affirmed by the Court of Appeals it is important to note that there are no South Carolina State Antitrust Claims pleaded in the Texas Multi-District Litigation. Apparently the grounds for the injunction relate to the salutory attempt by the South Carolina State Court to protect its citizens from being required to release 100% full purchase price claims for a less then 5% settlement. All that the South Carolina State Judge required was that the matter be brought before him for his approval. If, after such proceedings, he felt that the less than 5% settlement was fair he would permit the settlement to go forward. The reluctance of the plaintiffs and defendants in the Texas Federal Antitrust Action to submit their settlement to scrutiny by the South Carolina State Court Judge is obvious.

The Anti-Injunction Act, 28 USC 2283, is a limitation on 28 USC 1651 and prevents interference by a Federal Court except in aid of its jurisdiction or to protect its judgments. It is obvious that, in this case, there was never a claim under South Carolina Antitrust Laws raised before the District Judge.

The argument that was raised before the District Judge, and apparently concurred in by the Court of Appeals, was that the failure to permit claimants to settle claims not before the Court (but possible related thereto)

would frustrate any attempts to settle the Federal Controversy.

The United States Court of Appeals for the Second Circuit had the precise problem before it in *National Super Spuds vs. New York Mercantile Exchange,* 2 Cir. 1981, 660 F.2nd 9 where the Court held on page 18 of the opinion the following:

> "* * If a judgment after trial cannot extinguish claims not asserted in the class action complaint, a judgment approving a settlement in such an action ordinarily should not be able to do so either. * * *"

A similar result was obtained in the Seventh Circuit in *In Re General Motors Engine Interchange Litigation,* 7 Cir 1979, 594 F.2nd 1106. In that case also, class counsel attempted to settle state claims without giving the state claimants anything in return for such settlement.

We thus have a conflict between three circuits and this matter also requires resolution by this Court. However, the conflict question will be submitted in a subsequent point.

*General Motors,* however, is interesting in pointing out the vice of "attorney shopping" for a favorable settlement. The undersigned is not the winner of a "popularity contest", particularly among defendants. It would not be possible to settle South Carolina full purchase price claims with the undersigned for less than 5 cents on the dollar. Quite obviously the defendants preferred to settle with other attorneys not asserting South Carolina Anti Trust Claims and disposing of the clients of the undersigned through an injunction. The importance of determining this question at the present time before more mischief is done in other pending antitrust class actions is obvious.

Before turning to the Anti-Injunction Act itself the respondents will undoubtedly bring this Court's attention

to *Federated Department Stores vs. Moitie*—US—, No. 79-1517, decided June 15, 1981 Brennan J. dissenting. Respondents will undoubtedly claim that this decision indicates that State Anti-Trust Claims (at least where direct purchasers are involved) are now in some way involving a "Federal Question" because this Court in *Moitie* sustained removal of a State Antitrust Claim on alleged "Federal Question" grounds.

The *Moitie* decision was based on *res judicata* questions and not on "Federal Question" grounds and the sole reason for sustaining the second removal of the State suit to the Federal Courts was that the first State Action was properly removed to the Federal Courts on *diversity* (not on Federal Question) grounds. This is clear from the fact that, if *Moitie* was based on other than *res judicata* grounds this Court would have had to overrule a long standing series of precedents which hold that a case cannot be removed on Federal Question grounds where the alleged jurisdictional ground is exclusive to the Federal Courts. The Court would, in that case, have at least *mentioned* this precedential law and specifically overruled it, it did not. This, however, is another reason why an immediate review of the determination of the United States Court of Appeals for the Fifth Circuit is mandatory.

The precedential law involved is *Lambert Run Coal Co. vs. B&O RR Co.*, 258 US 377, 42 Sup. Ct. 349, 66 L.Ed. 671 (1922). This case has been repeatedly followed the latest case being *Hughes Construction Co. vs. Rheem Manufacturing Co.*, (DC ND Miss.) (1980), 458 Fed. Supp. 345. Other cases setting forth the same legal proposition are *State of Washington vs. American League of Professional Baseball Clubs*, 460 Fed.2nd 654 (1972), *Nevada vs. King*, 463 Fed. Supp. 749; *People vs. Glendale Savings & Loan Ass'n.*, 475 Fed. Supp. 728 and *Pure Milk Products Cooperative vs. National Farmers' Association*, 332 Fed. Supp. 866.

A reading of *Moitie* to claim that precedential law on Federal Jurisdiction of State Antitrust Claims has been overruled would also run afoul of other recent Supreme Court determinations. In *Exxon Corporation vs. Governor of Maryland,* 437 US 177 this Court recently held that State Antitrust Regulation is not pre-empted by the Federal Antitrust Laws. Similar decisional law appears in the Ninth Circuit in *State of California vs. California and Hawaiian Sugar Company,* 588 Fed. 2nd 1270 (1273) (1978) where the Court said:

> "* * To deny remand under these extraordinary circumstances amounts to federal pre-emption of the (state) antitrust laws by judicial act where it is conceded that there is no congressional pre-emption. Should such action become the general practice the state would be deprived of any power to legislate * * *"

See also, *State of Connecticut vs. Levi Strauss & Co.,* Trade Cases 1979-1, Par. 62,672, *Bibb vs. Navajo Freight Lines, Inc.,* 359 US 519, *Proctor and Gamble Company vs. City of Chicago,* 509 Fed. 2nd 69, *Jones vs. Rath Packing Co.,* 430 US 519, *Cloverleaf Butter Co. vs. Patterson,* 315 US 148 and *Standard Oil vs. Tennessee,* 217 US 413.

We now come to the specific provisions of the Anti-Injunction Act.

The lead case in this Court is *Vendo Co. vs. Lektro-Vend Corp.,* 433 US 623. In this case this Court stated, as a matter of policy, that it will generally not permit Federal Courts to interfere with State Court proceedings. In vacating an injunction against pending State Court proceedings this Court said that, in the normal case,

> "* * * as to the propriety of a federal injunction against state court proceeding should be resolved in favor of permitting the state courts to proceed in an orderly fashion to finally determine the controversy. * * *"

Similar decisional law appears in *Atlantic Coast Line RR Co. vs. Brotherhood of Locomotive Engineers,* 398 US 281, *Mitchum vs. Foster,* 407 US 225, *Smith vs. Apple,* 264 US 274 and *Toucey vs. New York Life Insurance Co.,* 314 US 118.

Even the Fifth Circuit in *Southern California Petroleum Corporation vs. Harper,* 273 Fed. 2nd 715 agreed with the Court's conclusions.

Therefore, under the decisional law of this Court the District Court and the Court of Appeals erred in granting the injunction involved herein.

## POINT THREE

**WHERE A STATE COURT HAS SPECIFICALLY ENJOINED PARTIES FROM DISPOSING OF STATE CLAIMS AS PART OF A SETTLEMENT OF FEDERAL LITIGATION WHERE THE STATE CLAIMS WERE NOT PLEADED IN THE FEDERAL LITIGATION, CAN THE FEDERAL COURT ISSUE AN INJUNCTION TO NULLIFY THE PROCESS OF THE STATE COURT UNDER THE TENTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES.**

The Tenth Amendment to the Constitution of the United States restricts Federal Powers to those enumerated in the Constitution. The power to regulate *intrastate* commerce or to interfere with the police power of a state to prevent violations of what it deems to be its public policy is obviously not permitted. The State of South Carolina, in its wisdom, has provided "full purchase price" penalty for parties engaging in a price fixing conspiracy having effects in South Carolina. It further required that an action be brought in a court of competent jurisdiction *within the State of South Carolina.* Never-

theless, by the issuance of the injunction involved, the Federal District Court has, in effect, nullified South Carolina Law and required that such an action be brought in a District Court in the State of Texas which has no jurisdiction of such a suit. This is, of course, complete interference with State power and is in violation of the Tenth Amendment.

The District Court even went further and nullified a State Court injunction to prevent the South Carolina claims from being disposed of in any other Court but the South Carolina Courts and this interference by the Federal District Court on the State Court's power is an additional violation of the Tenth Amendment to the Constitution of the United States.

This Court in *NLRB vs. Jones & Laughlin Steel Corp.*, 301 US 1, 57 Sup. Ct. 615, 81 L. Ed 893 has held that the "commerce clause" power given to Congress by the Constitution cannot nullify the provisions of the Tenth Amendment.

It might be contended that the Tenth Amendment is not violated in this case because the injunction involved is addressed to the parties and their attorneys rather than to the State Court itself. However decisional law has held that this is a distinction without a difference. See, for example, *Chaffee vs. Johnson,* 229 Fed. Supp. 445, aff'd 352 Fed. 2nd 514, cert. den., 384 US 956, 86 Sup. Ct. 1582, 16 L. Ed. 2nd 553. See also *Nationwide Mutual Insurance Co. vs. Vaage,* 265 Fed. Supp. 556 and *Blouin vs. Dembitz,* 367 Fed. Supp. 415, aff'd 489 Fed. 2nd 488.

## POINT FOUR

### WHERE THE FEDERAL LITIGATION SETTLEMENT DID NOT ENCOMPASS CLAIMS FOR INDIRECT PURCHASERS DOES A FEDERAL COURT HAVE THE RIGHT TO ENJOIN SUCH LITIGATION IN A STATE COURT.

In its opinion the Court of Appeals apparently concedes that there was no warrant in enjoining the petitioners from bringing an "indirect purchaser" State Claim since such claims are barred under Federal Law under *Illinois Brick vs. Illinois,* 431 US 720. The Court of Appeals meets this issue by stating that an indirect purchaser claim is not involved in the South Carolina proceedings, because the complaint filed in the South Carolina State Court did not allege such a claim. This is not correct. Plaintiff Three J Farms, Inc. is, in fact, such an indirect purchaser and specific allegations of such position in a State Antitrust Complaint is not required. The Court of Appeals then goes on to state that it would be "impracticable" to permit indirect purchaser claims to go forward on their own but, in any event, these claims are now "res judicata" because of the approval of the direct purchaser settlement.

The violations of the petitioners' rights in this connection is so blatant that no further argument on this question is required. However this decision is in conflict with *California & Hawaiian Sugar* of the Ninth Circuit.

## POINT FIVE

## CERTIORARI IS REQUIRED TO BE GRANTED IN THIS CASE BECAUSE OF CONFLICTS BETWEEN THE DECISION OF THE FIFTH CIRCUIT AND CONFLICTING DECISIONS OF THE SECOND CIRCUIT, THE SEVENTH CIRCUIT, AND THE NINTH CIRCUIT.

As provided in Rule 17 of the Rules of this Court, one of the primary reasons for granting a writ of certiorari is that the decision sought to be reviewed is in conflict with decisions of other circuits. The first conflict involves the right of a Federal Court to settle Class Action claims by permitting a release of claims not pleaded in the Class Action Complaint. In the present case State Antitrust Claims involving "full purchase price" recovery were not pleaded in the suit pending in the United States District Court for the Southern District of Texas but were settled by the Court as part of the settlement of Federal Antitrust Claims without granting any consideration to the holders of such claims.

The Fifth Circuit, in the decision now under review, held such conduct on the part of the District Court proper and held that the arguments raised by the petitioners against this practice were "frivolous". The Second Circuit in *National Super Spuds vs. New York Mercantile Exchange, supra* held directly to the contrary and the Seventh Circuit in *In Re General Motors Engine Interchange Litigation* also held similarly. The Fifth Circuit, in granting the present injunction against State Court Proceedings also held that, in effect, State Antitrust claims cannot even be asserted in State Courts if Federal Antitrust Claims are asserted in a Federal Action. This con-

flict must be resolved by this Court since it is vital in the administration of Antitrust Laws in this Country.

The second conflict involves the "indirect purchaser" claims asserted in the State Court Proceeding and concededly not viable under Federal Antitrust Laws. The Ninth Circuit in *California & Hawaiian Sugar, supra,* held that these claims are exclusively state claims and removal of these claims to a Federal Court on "Federal Question" grounds will not be permitted. The Fifth Circuit, in the case at Bar, has held that indirect purchaser claims, if they are combined with direct purchaser claims, must be asserted in a Federal Forum and would be lost if they were not so asserted on res judicata grounds. This conflict also requires resolution since it involves a vital matter involving the administration of State Antitrust Laws which are applicable to indirect purchasers.

## POINT SIX

### THE PRESENT INJUNCTION ISSUED AGAINST THE PETITIONERS HAS SO FAR DEPARTED FROM THE DECISIONAL LAW PREVIOUSLY ENUNCIATED BY THIS COURT AS TO REQUIRE THIS COURT'S SUPERVISIONAL INTERVENTION.

Another ground for the grant of a Petition for a Writ of Certiorari is that the decision sought to be reviewed has so far departed from the applicable principles of law involved as to require this Court to assert its right of supervision.

The District Court and the Court of Appeals have enjoined the petitioners from prosecuting claims under the Antitrust Laws of the State of South Carolina which were pending in the South Carolina State Courts and which were not pending in the United States District Court for

the Southern District of Texas. The State Court of South Carolina enjoined the defendants to dispose of such claims without the approval of the State Court of South Carolina.

Nevertheless, in complete violation of the decisional law involved, in complete violation of 28 USC 2283 (the Anti-Injunction Act), in complete violation of the Fifth and Tenth Amendments to the Constitution of the United States, and in complete violation of the rights of the petitioners to have their claims for violation of the Antitrust Laws of the State of South Carolina tried in the South Carolina State Courts, the District Court and the Court of Appeals sustained an injunction enjoining the continuance of the State Court proceedings in direct conflict with a State Court Injunction preventing this specific practice. The decisional law involved and the points supporting the petitioners' position have been reiterated in prior points in this petition and will not be further set forth here.

## CONCLUSION

**A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT SHOULD BE IN ALL RESPECTS GRANTED.**

Dated: January 21st, 1982

Respectfully submitted,

I. Walton Bader
BADER and BADER
*Attorneys for Petitioners*
65 Court Street
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# Appendix

# APPENDIX "1"
# PRETRIAL ORDER NO. 32 OF THE UNITED STATES DISTRICT COURT[a] FOR THE SOUTHERN DISTRICT OF TEXAS CONTAINING THE INJUNCTION APPEALED FROM HEREIN

IN RE CORRUGATED CONTAINER
ANTIRTRUST LITIGATION

This Document Relates to:

ALL ACTIONS

A pretrial conference was held in the captioned litigation on January 8, 1980, to discuss numerous discovery and other matters. The court, having studied the various motions, briefs, memoranda, and arguments advanced by counsel, issues the following order:

1. The claims in this litigation being based on alleged violations of the antitrust laws in connection with the manufacture and sale of corrugated sheets and boxes, and the facts being uncontroverted that defendant Potlatch Corporation withdrew completely from the business of manufacturing and selling corrugated sheets and boxes on September 30, 1975 and that such withdrawal was or should have been a matter of public knowledge in the corrugated industry, it is ORDERED and adjudged that Potlatch Corporation is entitled to and is hereby granted partial summary judgment in its favor and against plaintiffs on all claims herein arising subsequent to September 30, 1975.

2. In relation to defendants' motion to enjoin certain persons from interfering with this court's jurisdiction over this litigation, the court makes the following findings and order:

a. This court has jurisdiction over the subject matter hereof by virtue of its jurisdiction in *In re Corrugated Container Antitrust Litigation* (M.D.L. 310) and by virtue of 28 U.S.C. §1651. This Court has personal jurisdiction over Three J Farms, Inc., U.S. Textile Corp., Shapiro & Son Bedspread Corp., Troy H. Cribb & Sons, Inc., South Carolina Peach Growers Association, London Dry, Ltd., and Tabor City Foods, Inc. by reason of both their status as members of the plaintiff class in M.D.L. 310 and their general appearances before this court seeking special relief; over I. Walton Bader, Esq., Robert L. Stoddard, Esq. and Wesley A. Stoddard, Esq., attorneys for the aforenamed persons, by virtue of their appearing before this court in connection with the proceedings in M.D.L. 310; and over the moving parties herein.

b. Three J Farms, Inc., U.S. Textile Corp., Shapiro & Son Bedspread Corp. and Troy H. Cribb & Sons, Inc., by and through their attorneys, have taken, and manifested an intention to continue to take, actions threatening this court's exercise of its proper jurisdiction and the effectuation of its judgments in M.D.L. 310 by prosecuting duplicative litigation in the Court of Common Pleas for Spartanburg County, South Carolina, and seeking therein orders disrupting, *inter alia,* the conduct of discovery and settlement negotiations in M.D.L. 310. Accordingly, the aforesaid parties, together with all their respective directors, officers, agents, employees and attorneys, and all those acting in concert with them, are enjoined for so long as M.D.L. 310 remains pending before this Court, from proceeding further in any manner in connection with *Three J Farms, et al v. Alton Box Board, et. al.,* now pending as Civil Action No. 78-1257 in the United States District Court for the District of South Carolina, or in any manner with respect to the subject matter thereof in any court, federal or state, other than the United States District Court for the Southern District of Texas.

c. As of the date of the filing of the instant motion, South Carolina Peach Growers Association, London Dry, Ltd., and Tabor City Foods, Inc. had filed no action involving allegations of unlawful restraints of trade in the manufacture or sale of corrugated containers or corrugated sheets in any court. However, the aforesaid parties have, through their attorneys designated above, announced their intention to file such action(s) in courts other than this Court. Since the filing of such claims would of itself multiply litigation, interfere with this Court's exercise of its lawful jurisdiction and the effectuation of its judgments, the aforesaid parties, together with all their directors, officers, agents, employees and attorneys, and all those acting in concert with them, are enjoined, for so long as M.D.L. 310 remains pending before this court, from instituting or proceeding in any maner with regard to any such action(s) in any forum other than the United States District Court for the Southern District of Texas.

d. Attorneys I. Walton Bader, Robert L. Stoddard and Wesley A. Stoddard have taken, and manifested an intention to continue to take, actions threatening this Court's exercise of its proper jurisdiction and the effectuation of its judgments, by filing and threatening to file duplicative and harassing litigation in the courts of various states and by seeking therein orders disrupting the proceedings in M.D.L. 310. Accordingly, the aforesaid attorneys, together with their respective firms, employees and agents, and all those acting in concert with them, are enjoined for long as M.D.L. 310 remains pending before this Court, from instituting or proceeding in any manner with regard to any action(s) involving allegations of unlawful restraints of trade in the manufacture of sale of corrugated containers or corrugated sheets in any forum other than the United States District Court for the Southern District of Texas.

e. This injunction shall not be construed to determine whether or not any action encompassed within paragraphs 2, 3 and/or 4 is or would be properly barred from prosecution in thos forum, in addition to any other.

f. Jurisdiction is retained by this Court for the purpose of enabling any of the parties to apply to this Court at any time for such further orders and directions as may be necessary in connection with the terms of this injunction, for amendment or modification of any provision, for the enforcement of compliance therewith, and for the punishment of violations thereof.

3. The motion of the Sheet Plant Subclass representatives for preliminary approval of a settlement with eleven defendants has been studied by the court, together with evidence submitted by proponents and settling defendants and with evidence adduced at the December 3-4, 1979 hearing. The court finds that the Settlement Agreement dated November 29, 1979, between the Sheet Plant Subclass and the following defendants:

Container Corporation of America;
The Continental Group, Inc.;
Green Bay Packaging, Inc.;
Inland Container Corporation;
MacMillan Bloedel, Inc.; including
MacMillan Bloedel Containers, Inc.
MacMillan Bloedel Packaging, Ltd; and
MacMillan Bloedel Limited;
Olinkraft, Inc.;
Owens-Illinois, Inc.;
St. Joe Paper Company;
Stone Container Corporation;
U.S. Corrugated Fibrebox Company; and
Weyerhaeuser Company,

is well within a range which should be submitted to the subclass members for their approval and objections, and

therefore the November 29, 1979 Settlement Agreement on behalf of the Sheet Plant subclass is preliminarily approved.

Notice shall be prepared for mailing to the subclass members by the end of January, 1980, and a hearing is scheduled for March 5, 1980, at 9:00 a.m. at the Federal Courthouse, Houston, Texas to determine whether the proposed Settlement and plan of distribution should be approved.

4. As to the defendants' objections to plaintiffs' statement regarding pre-1970 document production, the court enters the following order:

Items numbered 6, 10, 11, 12, 15, 16, and 17 are withdrawn.

All remaining items shall be amended to delete reference to linerboard and corrugating medium, and shall further be amended as follows:

Item 1 is withdrawn except for copies of any documents relating to the 1960's produced to the New York grand jury investigating the corrugated industry in the early 1970's.

Item 2(a) shall be unchanged; 2(b) shall be amended by the addition of the following language "whose depositions have been noticed and taken by plaintiff or whose depositions are or may be noticed in the future."

Item 3(a) and (b) shall be unchanged; (c) and (d) are withdrawn.

Item 4(a) shall be unchanged; (b) shall be amended by striking the words "set forth or" from the first line.

Item 5(a) and (b) shall be unchanged.

Item 7 shall be amended by striking the words "or used" from the third line.

Item 8 shall be amended by striking all the language after "The Manual" on line 2.

Item 9 shall be amended by inserting the words "regarding the sale of corrugated containers or sheets"

after the word "competition" in line 1.

Item 13 shall be amended by striking the word "manufacture" in the first line, inserting the word "similar" before the word "activities" in line 3 and inserting the word "internally" after the word "received" in line 4.

Item 14 shall be amended by inserting the words "concerning the terms and conditions of sale of corrugated sheets or containers" after the word "discussed" on line 2.

Item 18 shall be amended by striking the words "would or" after "competitor" on line 2.

Item 19 shall be unchanged, except for the deletion of reference to linerboard.

5. Plaintiffs' motion to compel production of documents from settling defendants is withdrawn.

6. Plaintiffs' document request to non-settling defendants Set No. 2 has been studied by the court in connection with defendants' objections. The court enters the following order with respect to it:

Items 1, 2, and 3 shall be produced for all persons noticed for deposition, at least three days before the deposition is scheduled. If plaintiffs notice a deposition and then cancel it, the costs of the document search related thereto shall be taxed to plaintiffs.

Items 4 through 15 are denied except inasmuch as covered by Paragraph 7 of this pretrial order.

7. Defendants shall by January 26 produce to plaintiffs at the Houston depository copies of the documents they produced to the Philadelphia paper grand jury, Misc. No. 78-41, in the Eastern District of Pennsylvania.

8. Non-settling defendants' motion for sanction against plaintiff Accurate Metal Weatherstrip Company, Inc., for the failure of its president to appear at his noticed deposition is GRANTED as to taxing of Mr. Robert Green's costs, a sum of $163.50, against Accurate Metal

Weatherstrip; in all other respects, the motion is DENIED.

9. Any objections to plaintiffs' subpoena duces tecum to Mr. Larry Gustafson, dealing with access to grand jury transcripts, shall be filed with the court by Friday, January 18, 1980.

10. Non-settling defendants' motion to modify paragraph 10 of Pretrial Order No. 6, to include Washington, D.C., as a designated city for depositions is GRANTED.

11. The request of Plaintiffs' Steering Committee to use the $68,000 set aside from the St. Regis fund to defray claims processing expenses is GRANTED.

12. Class member H.P. Hood, Inc.'s motion to extend the claim filing date is DENIED.

13. The motion of Jay Foods, Inc. to withdraw its notice of exclusion from the class is GRANTED.

14. Pretrial Order No. 31 and the Memorandum Opinion and Order incorporated therein, filed December 21, 1979, are hereby AMENDED to insert the word "East" after the words "Western Kraft" at the following places: page 2, line 17, Pretrial Order 31; page 15, line 7 and line 17, Memorandum Opinion.

15. Defendant Westvaco Corporation's Motion for leave to amend its answer in the Franklin Case, H-78-671, and for leave to file a third party complaint, both in order to assert claims for contributions, are DENIED.

DONE this 16th day of January, 1980 in Houston, Texas.

s/
UNITED STATES DISTRICT JUDGE

## APPENDIX "2"
## OPINION OF THE UNITED STATES COURT OF APPEALS OF THE FIFTH CIRCUIT AFFIRMING THE GRANT OF INJUNCTION

In re Corrugated Container Antitrust Litigation (Three J Farms, Inc. et al., Appellants v. Plaintiffs' Steering Committee, Settling Defendants and Non-Settling Defendants, Appellees).

U.S. Court of Appeals, Fifth Circuit.* Unit A. No. 80-1164. Dated October 29, 1981. Appeal from U.S. District Court, Southern District of Texas.

CLARK, Cir. J.: This is an appeal from an order of the United States District Court for the Southern District of Texas enjoining certain of the plaintiffs in this class action from pursuing a lawsuit pending in a South Carolina state court in which these same persons are also plaintiffs and from pursuing any claims relating to this class action in any court other than the United State District Court in Texas. For the reasons stated herein, we affirm.

The litigation that is the basis of this appeal is an enormous class action in which more than fifty private treble damage actions brought on behalf of all purchasers of corrugated containers and sheets against thirty-seven manufacturers, alleging an anti-trust conspiracy, were consolidated by the Judicial Panel on Multidistrict Litigation and transferred to the United States District Court for the Southern District of Texas (the multidistrict court). A more detailed history of the litigation is found in *In re Corrugated Container Antitrust Litigation* [1981-1 Trade Cases Par. 63,966], 643 F.2d 195, 202-203 (5th Cir. 1981) (*Adams Extract*). As we shall discuss below, *Adams Extract* has decided some of the issues in this appeal.

The South Carolina state court plaintiffs (South Carolina Plaintiffs) against whom the injunction issued

are also members of the plaintiff class in the case still pending in the multidistrict court. On June 30, 1978, Three J Farms, Inc., and three other corporations filed a complaint in the Court of Common Pleas for Spartanburg County, South Carolina, (South Carolina Complaint) purporting to represent the class of all persons injured during the alleged conspiracy in the corrugated industry by actions that violated the antitrust laws of South Carolina, S. C. Code §39-3-10, *et seq.* (1976). The same attorneys who represented the named plaintiffs in filing the South Carolina Complaint represent these parties in the multidistrict court. That complaint is similar to the Unified Complaint filed in the multidistrict case. Indeed, some of the paragraphs in the two complaints are identical. The South Carolina Complaint, however, contains no allegations of violations of federal antitrust laws. On July 31, 1978, the defendants in the South Carolina action removed it to the United States District Court for the District of South Carolina. On October 13, 1978, that court remanded the action to the Court of Common Pleas. Two weeks later, the United States district judge stated that his remand order had been entered inadvertently, and held that it was null and void. The court of appeals reversed, holding that the district judge lacked power under 28 U.S.C. §1447(d) to vacate his order of remand. *Three J Farms, Inc. v. Alton Box Board* [1980-1 Trade Cases Par. 63,001], 609 F. 2d 112 (4th Cir. 1979), cert. denied, 445 U. S. 911, 100 S. Ct. 1090, 63 L. Ed. 2d 327 (1980). The South Carolina litigation has been stayed by agreement of the parties pending the outcome of the instant appeal.

The South Carolina Plaintiffs advance four objections to the injunction order of the multidistrict court. They argue that the ijunction violates the federal Anti-Injunction Act, that it violates the fifth and tenth amendments to the United States Constitution, that the South Carolina claims were not before the multidistrict court,

and that the multidistrict court would have had no jurisdiction over those claims even had they been asserted there.

*[Anti-Injunction Act]*

The Anti-Injunction Act, 28 U.S.C. §2283, provides: "A court of the United States may not grant an injunction to stay proceedings in a State court except as expressly authorized by Act of Congress, or where necessary in aid of its jurisdiction, or to protect or effectuate its judgments." This statute does not apply to those parts of the multidistrict court order that relate to state court actions that have not yet been filed. *Dombrowski v. Pfister,* 380 U.S. 479, 484 n. 2, 85 S. Ct. 1116, 1119 n. 2, 14 L. Ed. 2d 22, 27 n.. 2(1965); *Cf. Younger v. Harris,* 401 U.S. 37, 41, 91 S. Ct. 746, 749, 27 L. Ed. 2d 669, 673 (1971). The only question is whether section 2283 precludes the multidistrict court from entering its injunction against prosecution of the *Three J Farms* case presently pending in South Carolina.

The Anti-Injunction Act embodies important principles of federalism. The Supreme Court has instructed:

> Any doubts as to the propriety of a federal injunction against state court proceedings should be resolved in favor of permitting the state courts to proceed in an orderly fashion to finally determine the controversy. The explicit wording of §2283 itself implies as much, and the fundamental principle of a dual system of courts leads inevitably to that conclusion.

*Atlantic Coastline R. R. v. Brotherhood of Locomotive Engineers,* 398 U.S. 281, 297, 90 S. Ct. 1739, 1748, 26 L. Ed. 2d 234, 246 (1970). Likewise, this court has held that the "complainant must make a strong and unequivocal showing of relitigation of the same issue in order to over-

come the federal courts' proper disinclination to intermeddle in state court proceedings." *Southern California Petroleum Corp. v. Harper,* 273 F. 2d 715, 719 (5th Cir. 1960).

The statute excepts from its interdict injunctions necessary (1) to aid the court's jurisdiction and (2) to protect or effectuate its judgments. It is undisputed that the multidistrict court has jurisdiction of the class action before it. The multidistrict court perceived that the actions of the appellants in pursuing substantially similar state law claims in the South Carolina court would be a challenge to that jurisdiction. We agree. As the Supreme Court has explained, this exception to the Anti-Injunction Act means that injunctions may be issued where "necessary to prevent a state court from so interfering with a federal court's consideration or disposition of a case as to seriously impair the federal court's flexibility and authority to decide that case." *Atlantic Coastline R. R. v. Brotherhood of Locomotive Engineers,* 398 U.S. 281, 295, 90 S. Ct. 1739, 1747, 26 L. Ed. 2d 234, 245 (1970) (dicta). This complicated antitrust action has required a great deal of the district court's time and necessitates its ability to maintain a flexible approach in resolving the various claims of the many parties. Further, the presiding judge of the Seventh Judicial Circuit, Court of Common Pleas of Spartanburg County, South Carolina, entered a temporary restraining order on October 23, 1978, enjoining the defendants in the Three J Farms suit, many of whom are also defendants in the federal multi-district action, from "preparing, disseminating or utilizing any settlement document in connection with any action pending in any Court wherein such settlement document contains any release of any antitrust claims under the laws of the State of South Carolina without the prior approval of this Court." Such a limitation on the terms of settlement would clearly interfere with

the multidistrict court's ability to dispose of the broader action pending before it.

The entry of an appealable order is generally considered a prerequisite to invocation of the relitigation or "protection of judgment" exception. Wright, Miller & Cooper, Federal Practice and Procedure: Jurisdiction §4226 (1978). The judgments involved in the multidistrict action which are sought to be protected are those approving settlements executed between the class plaintiffs and most of the defendants. They are appealable. These judgments were entered shortly after the order appealed from here. However, when the injunction order was issued, the multidistrict court had approved the settlements and the final judgments were predictable if not assured. Since such an objection would most probably be moot, the state court plaintiffs do not complain that the injunction preceded final judgment.

An exception to the general rule that a federal forum may not enjoin the prosecution of a simultaneous *in personam* action on the same cause of action in state court comes into play once judgment is entered. Unless the judgment is set aside on appeal, state proceedings seeking to relitigate issues covered by the federal judgment may be enjoined under the "protection" exception. *Woods Exploration & Producing Co. v. Aluminum Co. of America* [1971 Trade Cases Par. 73,422], 438 F. 2d 1286, 1311-1316 (5th Cir. 1971), cert. denied, 404 U.S. 1047, 92 S. Ct. 701, 30 L. Ed. 2d 736 (1972); Wright, Miller & Cooper, Federal Practice and Procedure: Jurisdiction §4226 (1978). As this court explained in *Woods Exploration,* the exception applies where the state proceeding would be precluded by *res judicata. Id.* at 1312. *Woods Exploration* explained that although the state and federal cases asserted different theories, the causes of action based on the same asserted right of the plaintiff and the same alleged acts of the

defendant were identical. *Id.* at 1313-1314. The same is true in this case. *Res judicata* would bar the South Carolina litigation. Since there are federal judgments that approve some of the settlements and that control the further litigation of the appellants' cause of action, *In re Corrugated Container Antitrust Litigation* [1981-2 Trade Cases Par. 64,338], Slip op. at 12649, ____F.2d____ (5th Cir. 1981), the injunction was and is not prelcuded by 28 U.S.C. §2283.

Moreover, the policies of federalism are not flouted by this injunction. In this case, the multidistrict court found that attorneys I. Walton Bader, Robert L. Stoddard, and Wesley A. Stoddard "have taken, and manifested an intention to continue to take, actions threatening this court's exercise of its proper jurisdiction and the effectuation of its judgments, by filing and threatening to file duplicative and harassing litigation in the courts of various states and by seeking therein orders disrupting the proceedings in M. D. L. 310." The appellants have not attacked the multidistrict court's characterization of the motivation behind the actions taken by these attorneys. Under these circumstances, the South Carolina court could not be offended by losing the opportunity to entertain a harassing lawsuit.

*[Constitutional Issues]*

The second argument raised is that the injunction violates the fifth and ninth amendments to the United States Constitution. In support of this argument, the South Carolina plaintiffs claim that the South Carolina antitrust law provides for damages measured by the full amount of purchase price, and that deprivation of this favorable treatment of antitrust plaintiffs has deprived them of property without due process of law. We note that a similar argument was raised in the *Adams Extract* case.

There, the appellants, Pleasure Hours, Inc., and London Dry, Limited, who are also appellants here, challenged the approval of the settlement on the basis of the tenth amendment. Their contention in that case was rejected as being frivolous. 643 F.2d at 222. It is also frivolous here. There is "nothing in the tenth amendment or its accompanying case law" that prevents the entry of this injunction under the circumstances. *See id.* Although *Adams Extract* did not expressly discuss due process, it did point out that the parties to the multidistrict litigation could protect their state law claims by asserting them as pendent claims in the federal forum. Thus, there is no deprivation of property.

At the conclusion of the appellants' discussion of this argument, they assert that the multidistrict court attempted to overrule the United States Supreme Court in granting the injunction. The reasoning goes that since the Fourth Circuit held the South Carolina District Court had no jurisdiction to set aside its remand order and the Supreme Court denied certiorari, the multidistrict court's effort to stop relitigation in the South Carolina state court tacitly overrules the Supreme Court's denial of certiorari. This is erroneous. Not only is the denial of certiorari without precedential effect, *Hughes Tool Co. v. Trans World Airlines, Inc.* [1973-1 Trade Cases Par. 74,295], 409 U.S. 363, 365, 93 S. Ct. 647, 650, 34 L. Ed. 2d 577, 581 (1973); *Maryland v. Baltimore Radio Show, Inc.*, 338 U. S. 912, 919, 70 S. Ct. 252, 255, 94 L. Ed. 562 (1950) (opinion of Frankfurter, J.), but also the Fourth Circuit's decision was based on the district court's lack of jurisdiction to recall its remand order, not on the merits of that action. The argument is specious.

*[Indirect Purchasers; Jurisdiction]*

In their third point, the South Carolina plaintiffs complain that the multidistrict court's injunction

precludes indirect purchasers from bringing suits in state court. They urge that this is particularly egregious since indirect purchasers have no cause of action under federal antitrust laws. The multidistrict court order does not address this issue. The transcript of the hearing on the motion for injunction reveals that the court considered it impractical to enjoin the suit in the South Carolina state court only as to the direct purchasers and to allow it to continue in favor of indirect purchasers. The complaint filed in the South Carolina state court action contains no allegations of an indirect purchaser cause of action. Thus, this argument concerns actions not yet filed, as to which the Anti-Injunction Act .does not apply. The arguments of the South Carolina state court plaintiffs that these claims were not before the multidistrict court is similar to their final argument, that since the state claims were not pleaded, the multidistrict court lacked jurisdiction over these claims. These arguments, made without citation, ignore the district court's pendent jurisdiction under *United Mine Workers v. Gibbs,* 383 U. S. 715, 86 S. Ct. 1130, 16 L.Ed. 2d 218 (1966), and the holding of *Woods Exploration,* 438 F. 2d at 1315, that "*res judicata* would be applicable if plaintiffs were afforded an opportunity to allege the state grounds which constituted the same cause of action in the federal proceedings."

The order of the district court is

Affirmed.

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* Former Fifth Circuit case, Section 9(1) of Public Law 96-452—October 14, 1980.

## APPENDIX "3"
## FIFTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES

### AMENDMENT V—CAPITAL CRIMES; DOUBLE JEOPARDY; SELF—INCRIMINATION; DUE PROCESS; JUST COMPENSATION FOR PROPERTY

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

## APPENDIX "4"
## TENTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES

### AMENDMENT X—RESERVED POWERS TO STATES

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

## APPENDIX "5"
## ALL WRITS ACT 28 USC 1651

**28 U.S.C. §1651. Writs**

(a) The Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law.

(b) An alternative writ or rule nisi may be issued by a justice or judge of a court which has jurisdiction.

## APPENDIX "6"
## ANTI-INJUNCTION ACT 28 USC 2283

**28 U.S.C. §2283. Stay of State court proceedings**

A court of the United States may not grant an injunction to stay proceedings in a State court except as expressly authorized by Act of Congress, or where necessary in aid of its jurisdiction, or to protect or effectuate its judgments.

## APPENDIX "7
## SOUTH CAROLINA ANTI-TRUST ACT SECTION 39-3-30 OF THE SOUTH CAROLINA CODE

### SOUTH CAROLINA CODE

**§39-3-30. Injured person may recover damages.**

Any person who may be injured or damaged by any such arrangement, contract, agreement, trust or combination described in §39-3-10 may sue for and recover, in any court of competent jurisdiction in the State, from any person operating such trust or combination, the full consideration or sum paid by him for any goods, wares, merchandise or articles the sale of which is controlled by such combination or trust.

# Opposition

1

Supreme Court, U.S.
FILED
MAR 22 1982
ALEXANDER L. STEVAS
CLERK

No. 81-1391

# In the Supreme Court of the United States

October Term, 1981

THREE J FARMS, INC., et al.,
*Petitioners,*

v.

PLAINTIFFS' STEERING COMMITTEE, et al.,
*Respondents.*

## BRIEF OF RESPONDENTS-DEFENDANTS IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS FOR THE FIFTH CIRCUIT

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Dated: March 19, 1982

Financial Press Corporation, Pittsburgh

## QUESTION PRESENTED FOR REVIEW

The District Court having found that certain class members and their attorneys had interfered and would continue to interfere with proceedings in this multidistrict antitrust litigation by prosecuting and threatening to commence duplicative litigation in state courts and by seeking collaterally to attack judgments and orders entered by the District Court, did the Court of Appeals properly affirm the District Court's exercise of discretion in enjoining these class members and their attorneys from prosecuting such litigation in any forum other than the District Court during the pendency of the multidistrict proceeding?

## PARTIES TO THE PROCEEDINGS IN THE COURT BELOW

*Appellants*

London Dry, Ltd.
Shapiro & Son Bedspread Corp.
South Carolina Peach Growers Association
Three J Farms, Inc.
Troy H. Cribb & Sons, Inc.
U.S. Textile Corporation
I. Walton Bader
Robert L. Stoddard
Wesley A. Stoddard

*Defendants-Appellees*

Alton Box Board Company
Boise Cascade Corporation
Champion International Corporation (including Hoerner Waldorf Corporation)
The Chesapeake Corporation of Virginia
Consolidated Packaging Corporation
Container Corporation of America
The Continental Group, Inc.

Corco, Inc.
Crown Zellerbach Corporation
Diamond International Corporation
Dura Containers, Inc.
Fibre Box Association
Fibreboard Corporation
Georgia-Pacific Corporation
Green Bay Packaging, Inc.
Inland Container Corporation
International Paper Company
Interstate Container Corporation
Longview Fibre Company
MacMillan Bloedel, Inc.
MacMillan Bloedel Containers, Inc.
MacMillan Bloedel, Ltd.
MacMillan Bloedel Packaging, Ltd.
The Mead Corporation
Menasha Corporation
Olinkraft, Inc.
Owens-Illinois, Inc.
Packaging Corporation of America
Potlatch Corporation
St. Joe Paper Company
St. Regis Paper Company
Southwest Forest Industries, Inc.
Stone Container Corporation
Union Camp Corporation
U.S. Corrugated Fibre-Box Company
Western Kraft East, Inc.
Westvaco Corporation
Weyerhaeuser Company
Willamette Industries, Inc.

*Plaintiffs-Appellees*

Plaintiffs' Steering Committee, on behalf of plaintiffs in the District Court

## TABLE OF CONTENTS


Page

QUESTION PRESENTED FOR REVIEW ..... i

PARTIES TO THE PROCEEDINGS IN THE COURT BELOW ..... i

TABLE OF AUTHORITIES ..... iv

STATEMENT OF THE CASE ..... 1

A. Background of the Corrugated Container Antitrust Litigation, M.D.L. 310 ..... 2

B. The Three J Farms Litigation ..... 4

C. Petitioners' Appearances in the District Court .. 8

D. The District Court's Findings and Injunction Order ..... 10

E. The Court of Appeals' Ruling ..... 10

REASONS FOR DENYING THE WRIT ..... 11

I. There Is No Conflict Among the Circuits With Respect to the Subject of This Proceeding ..... 11

II. The Court of Appeals' Decision Is in Accord With Controlling Decisions of This Court and Raises No Important, Unsettled Questions of Federal Law ..... 17

A. The Orders of The Courts Below Do Not Violate 28 U.S.C. §2283 ..... 17

B. Petitioners' Constitutional Arguments Are Meritless ..... 23

CONCLUSION ..... 25

APPENDICES ..... A-1

## TABLE OF AUTHORITIES

### CASES

Page

*Albright v. R.J. Reynolds Tobacco Co.*, 463 F. Supp. 1220 (W.D. Pa. 1979) ..... 18

*American Insurance Co. v. Lester*, 214 F.2d 578 (4th Cir. 1954) ..... 19

*Atlantic Coast Line R.R. v. Brotherhood of Locomotive Engineers*, 398 U.S. 281 (1970) ..... 18, 22

*Bekoff v. Clinton*, 344 F. Supp. 642 (S.D.N.Y. 1972) ..... 19

*Belliston v. Texaco, Inc.*, 521 P.2d 379 (Utah 1974) ..... 14

*Complaint of Cosmopolitan Shipping Co.*, 453 F. Supp. 268 (S.D.N.Y. 1978) ..... 19

*In re Corrugated Container Antitrust Litigation*, 659 F.2d 1332 (5th Cir. 1981) ..... 1

*In re Corrugated Container Antitrust Litigation*, 643 F.2d 195 (5th Cir. 1981), *further order after limited remand on other grounds*, 659 F.2d 1322 (5th Cir. 1981) ..... 4

*In re Corrugated Container Antitrust Litigation*, 441 F. Supp. 921 (J.P.M.L. 1977) ..... 3

*In re Corrugated Container Antitrust Litigation (Armour and Co., et al.)*, M.D.L. No. 310 (J.P.M.L., Apr. 23, 1980) ..... 3

*In re Corrugated Container Antitrust Litigation, (Franklin Container)*, 447 F. Supp. 468 (J.P.M.L. 1978) ..... 3

*D.G. Bland Lumber Co. v. N.L.R.B.*, 177 F.2d 555 (5th Cir. 1949) ..... 19

Page

*Doe v. Ceci*, 517 F.2d 1203 (7th Cir. 1975) .....21

*Dombrowski v. Pfister*, 380 U.S. 479 (1965) .....18

*Donelon v. New Orleans Terminal Co.*, 474 F.2d 1108 (5th Cir.), *cert. denied*, 414 U.S. 855 (1973) .....21

*In re Eastern Sugar Antitrust Litigation*, M.D.L. 201A (E.D. Pa.).....16

*Engelhardt v. Bell & Howell Co.*, 327 F.2d 30 (8th Cir. 1964) .....14

*Federated Department Stores, Inc. v. Moitie*, 101 S.Ct. 2424 (1981) .....16

*Ford Motor Co. v. Superior Court*, 35 Cal. App. 3d 676, 110 Cal. Rptr. 59 (1973) .....14

*In re General Motors Corp. Engine Interchange Litigation*, 594 F.2d 1106 (7th Cir.), *cert. denied*, 444 U.S. 870 (1979)..... 12, 14, 15

*General Supplies, Inc. v. Southwire Co.*, 275 S.E.2d 579 (S.C. 1981)..... 5

*Harper Plastics, Inc. v. Amoco Chem. Corp.*, 657 F.2d 939 (7th Cir. 1981) ..... 14, 15

*International Ass'n of Machinists & Aerospace Workers v. Nix*, 512 F.2d 125 (5th Cir. 1975)... 19, 21

*Jacksonville Blow Pipe Co. v. Reconstruction Finance Corp.*, 244 F.2d 394 (5th Cir. 1957).....21

*Looney v. Eastern Texas R.R.*, 247 U.S. 214 (1918) .....19

*McCann v. Whitney*, 25 N.Y.S.2d 354 (Sup. Ct. 1941) ...14

*Mitchum v. Foster*, 407 U.S. 225 (1972) ..... 20, 21, 22

*N.L.R.B. v. Jones & Laughlin Steel Corp.*, 301 U.S. 1 (1937) .....24

*National Super Spuds, Inc. v. New York Mercantile Exchange*, 660 F.2d 9 (2d Cir. 1981) ..... 12, 13, 14, 15

Page

*Silver v. Queen's Hospital*, 629 P.2d 1116 (Hawaii 1981) . 14
*Smith v. Apple*, 264 U.S. 274 (1924) ..... 21
*Southern California Petroleum Corp. v. Harper*, 273 F.2d 715 (5th Cir. 1960) ..... 22
*Sperry Rand Corp. v. Rothlein*, 288 F.2d 245 (2d Cir. 1961) ..... 21
*In re Sugar Antitrust Litigation (State of California v. California and Hawaiian Sugar Co.)*, 588 F.2d 1270 (9th Cir. 1978), *cert. denied*, 441 U.S. 932 (1979) ..... 12, 15, 16
*Supreme Tribe of Ben-Hur v. Cauble*, 255 U.S. 356 (1921) ..... 20
*Swann v. Charlotte-Mecklenberg Bd. of Educ.*, 501 F.2d 383 (4th Cir. 1974) ..... 19
*Three J Farms, Inc. v. Alton Box Board Co.*, 1979-1 Trade Cas. ¶ 62,423 (D.S.C. 1978), *rev'd*, 609 F.2d 112 (4th Cir. 1979), *cert. denied*, 445 U.S. 911 (1980) ..... 4, 5, 6, 7, 8
*Toucey v. New York Life Ins. Co.*, 314 U.S. 118 (1941) ..... 22
*United Mineworkers of America v. Gibbs*, 383 U.S. 715 (1966) ..... 14
*United States v. District of Columbia*, 654 F.2d 802 (D.C. Cir. 1981) ..... 18
*Vendo Co. v. Lektro-Vend Corp.*, 433 U.S. 623 (1977) ..... 21, 22
*In re Wiring Device Antitrust Litigation*, 498 F. Supp. 79 (E.D.N.Y. 1980) ..... 16
*Woods Exploration & Producing Co. v. Aluminum Co. of America*, 438 F.2d 1286 (5th Cir. 1971), *cert. denied*, 404 U.S. 1047 (1972) ..... 14, 20

Page

*Yuba Consolidated Gold Fields v. Kilkeary*,
206 F.2d 884 (9th Cir. 1953) ..... 19

CONSTITUTION

Constitution of the United States
Article III ..... 24
Fifth and Tenth Amendments ..... 17, 23, 24

STATUTES

Sherman Act, section 1, 15 U.S.C. §1 ..... 2
28 U.S.C. §1404(a) ..... 3
28 U.S.C. §1407 ..... 6
28 U.S.C. §1651 ..... 24
28 U.S.C. §2283 ..... 17, 18, 20, 21, 22, 23, 24
S.C. Code §39-3-10 et seq ..... 5

RULES OF PROCEDURE

Fed. R. Civ. P. 23(e) ..... 3
Fed. R. Civ. P. 54(b) ..... 3, 21

MISCELLANEOUS

1A, Pt. 2 Moore's *Federal Practice* ¶ 0.227
(2d ed. 1981) ..... 19

No. 81-1391

# In the Supreme Court of the United States

October Term, 1981

THREE J FARMS, INC., et al.,
*Petitioners,*

v.

PLAINTIFFS' STEERING COMMITTEE, et al.,
*Respondents.*

## BRIEF OF RESPONDENTS-DEFENDANTS IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS FOR THE FIFTH CIRCUIT

## STATEMENT OF THE CASE

The Petition for a Writ of Certiorari (the "Petition") omits almost entirely any description of Petitioners' actions and attempted interference with the jurisdiction, judgments and orders of the District Court that provided the basis for, and led to the entry of, the injunction they seek to have this Court review.[1] These class members also seek to use their Petition as a

[1]References in this Brief to the "District Court" and "Court of Appeals" are to the lower federal courts whose orders are involved in this proceeding. References to the Record ("R.") are to pages of Volume 2 of the record in the Court of Appeals. The Court of Appeals' opinion in this case, which is reported at 659 F.2d 1332 (5th Cir. 1981), will be cited as "Petition, App. 2." Pursuant to rule 28.1 of the Rules of the Supreme Court, Appendix A to this Brief contains a listing of parents, subsidiaries and affiliates of the corporations on whose behalf this Brief is filed.

vehicle to attempt to overcome the consequences of their having elected not to opt out of the plaintiff class in the *Corrugated Container Antitrust Litigation*, an enormous multidistrict, treble damage antitrust proceeding, by raising questions relating to class action settlement approval and other matters that simply were not before the Court of Appeals in this proceeding.

Accordingly, it is necessary here to correct the numerous misstatements in the Petition by describing certain relevant and undisputed facts, including (a) Petitioners' actual and threatened use of state court litigation to disrupt and interfere with proceedings in this multidistrict litigation, and (b) the requests by Petitioners, all of whom are members of the plaintiff class certified in this litigation, for special relief from the District Court designed to further their objective of interfering with the proceedings in the District Court by filing duplicative litigation in state courts. It is these facts that provided the basis for entry of the District Court's order enjoining prosecution of such litigation in state courts and that demonstrate that the Petition should be denied.

## A. Background of the Corrugated Container Antitrust Litigation, M.D.L. 310

This litigation comprises more than 60 treble damage antitrust actions, including more than 40 class actions, originally filed in various federal district courts throughout the country beginning as early as March 1977. The 37 defendants in this litigation are alleged to have engaged in a nationwide conspiracy to fix, raise, maintain and stabilize the prices of corrugated containers and corrugated sheets in violation of section 1 of the Sherman Act, 15 U.S.C. §1. Pursuant to several orders of the Judicial Panel on Multidistrict Litigation, all of these cases filed in federal courts were consolidated for pretrial proceedings in the Southern District of Texas as *In re Corru-*

*gated Container Antitrust Litigation*, M.D.L. No. 310 ("M.D.L. 310").[2]

In March 1978 virtually all of the class action plaintiffs in M.D.L. 310 amended their separate complaints by adopting a single Unified and Consolidated Complaint (the "Unified Complaint"). (R. 1-18.) Thereafter, on September 6, 1978, the District Court certified a plaintiff class in M.D.L. 310 consisting of "all persons in the United States...who purchased corrugated containers or corrugated sheets from any defendant, or any subsidiary or affiliate of any defendant, at any time during the period from January 1, 1960 to January 25, 1978." (R. 19-34.)

Beginning in July 1978, certain of the defendants entered into settlement agreements with the plaintiff class in M.D.L. 310. The majority of these settlements were entered into between November 1978 and January 1979, and by the time of the entry by the District Court of the order here in question, 29 defendants had entered into such settlements for a total amount in excess of $300 million. (R. 165.) Also by that date, and after notice to the class, final approval of these settlements under rule 23(e) of the Federal Rules of Civil Procedure had been granted by the District Court, which entered final judgments pursuant to those approvals under rule 54(b) of the Federal Rules of Civil Procedure. These judgments dismiss the claims of class members against the settling defendants, under both federal and state antitrust laws, relating to the alleged conspiracy.[3]

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[2]In re Corrugated Container Antitrust Litigation, 441 F. Supp. 921 (J.P.M.L. 1977); In re Corrugated Container Antitrust Litigation (Franklin Container), 447 F. Supp. 468 (J.P.M.L. 1978); In re Corrugated Container Antitrust Litigation (Armour and Co., *et al.*), M.D.L. No. 310 (J.P.M.L., Apr. 23, 1980). Additionally, the District Court ordered all of the class action cases to be transferred to that Court pursuant to 28 U.S.C. § 1404(a).

[3]These judgments dismiss

> [class members' claims] arising under the antitrust laws of the United States or of any state or other jurisdiction, or any similar statutory or

*(continued)*

**B. The Three J Farms Litigation**

On June 30, 1978, more than one year after the first corrugated container class action was commenced in the federal courts and more than three months after the Unified Complaint was filed in the District Court, a purported class action antitrust complaint was filed in the Court of Common Pleas for Spartanburg County, South Carolina, by Petitioners Three J Farms, Inc., U.S. Textile Corp., Shapiro & Son Bedspread Corp. and Troy H. Cribb & Sons, Inc. (*Three J Farms, Inc., et al. v. Alton Box Board Co., et al. ("Three J Farms")*). (R. 96-105.)[4] Although the *Three J Farms* complaint pur-

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common law, which have been, might have been, are now or could be asserted in these actions in connection with corrugated containers and corrugated sheets or which relate to or arise out of the unlawful conspiracy to fix, raise, maintain or stabilize the prices of corrugated containers or corrugated sheets alleged in the Unified and Consolidated Complaint, as amended, on file herein ....

Although the Court of Appeals noted that the judgments were not entered until shortly after the District Court entered the injunction relating to Petitioners (Petition, App. 2, at 12a), in fact the District Court had entered a judgment approving the settlements on December 21, 1979, several weeks prior to the injunction. At the request of certain parties, the District Court subsequently entered separate judgments relating to each settling defendant, and it was these separate judgments to which the Court of Appeals referred.

Various parties, including most of the Petitioners, filed appeals to the Court of Appeals for the Fifth Circuit from these final judgments. Appeals Nos. 80-1018 & 80-1103 (5th Cir.). On April 3, 1981, the Court of Appeals entered an order sustaining the District Court's approval of the settlements over Petitioners' objections. In re Corrugated Container Antitrust Litigation, 643 F.2d 195, 221-23, 225 (5th Cir. 1981), *further order after limited remand on other grounds*, 659 F.2d 1322 (5th Cir. 1981). Petitioners' rehearing petitions relating to their appeals from the settlement judgments were denied by the Court of Appeals on August 10, 1981. Petitioners did not seek review in this Court of the Court of Appeals' disposition of their appeals from the settlement judgments. Subsequent to entry of the judgments referred to above, all but one of the remaining defendants entered into settlements with the M.D.L. 310 plaintiff class. A class action trial against the remaining non-settling defendant was held in the summer of 1980.

[4]Shapiro & Son Bedspread Corp. was alleged to be a New York corporation. The remaining plaintiffs in that complaint were alleged to be South

*(continued)*

ported to be based upon alleged violation of the South Carolina antitrust laws (S.C. Code §39-3-10 et seq.), the allegations in this state court complaint were virtually identical to the allegations in the Unified Complaint in M.D.L. 310. As the Court of Appeals noted (*see* Petition, App. 2, at 8a-9a), the alleged conduct and effects are identically described in these parallel complaints[5] and the parties, too, are the same: each of the 36 corporate defendants named in the *Three J Farms* complaint is also a defendant in M.D.L. 310, and, as Petitioners conceded in the District Court, each Petitioner and the purported class members they seek to represent in the South Carolina action are members of the class certified in M.D.L. 310. (R. 35-40.) Moreover, as discussed more fully at pages 8-9 *infra*, none of the *Three J Farms* plaintiffs opted out of the M.D.L. 310 class—even though they had ample opportunity to do so after notice was sent to the class—and, in fact, they sought to participate in the M.D.L. 310 settlements and appealed to the Court of Appeals from the judgments entered on those settlements.[6]

Defendants removed the South Carolina action to federal court, but the *Three J Farms* plaintiffs resisted the coordination of their case with the M.D.L. 310 actions upon which their complaint was based. Shortly thereafter, these M.D.L. 310

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Carolina corporations. All of these companies were alleged to have been direct purchasers of corrugated containers from one or more of the defendants named in that complaint. (R. 99, 103. *See also* Petition, App. 2, at 15a.)

[5] *Compare* Unified Complaint ¶¶ 14, 15, 18, 19, 20, 21 (R. 7-10) *with Three J Farms* Complaint ¶¶ 17, 18, 20, 21, 22, 23 (R. 100-02). As one District Judge observed, the *Three J Farms* plaintiffs "lift from the unified complaint in M.D.L. No. 310 entire paragraphs without any change of language or even punctuation." Three J Farms, Inc. v. Alton Box Board Co., 1979-1 Trade Cas. ¶ 62,423, at 76,550 (D.S.C. 1978).

[6] (R. 35-70.) Subsequent to the filing of the *Three J Farms* complaint, the Supreme Court of South Carolina held that class actions may not be prosecuted in South Carolina state courts based upon claims of violation of the South Carolina antitrust laws. General Supplies, Inc. v. Southwire Co., 275 S.E.2d 579 (S.C. 1981).

class members took advantage of an unintentional procedural lapse on the part of the South Carolina federal court, by which *Three J Farms* was remanded to state court, and sought orders in the state court that were expressly designed to interfere with M.D.L. 310. Specifically, they sought, and in one instance the state court purported to grant *ex parte*, orders that could have prevented the consummation of settlement agreements in M.D.L. 310 and would have required separate, duplicative discovery proceedings in that state court, including discovery that was inconsistent with discovery rulings in this multidistrict litigation.[7]

Thus, the *Three J Farms* plaintiffs' attorneys, without notice to defendants, sought and purported to obtain a temporary restraining order of the Court of Common Pleas for Spartanburg County purporting to enjoin the defendants

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[7]Defendants removed the South Carolina action on July 31, 1978, and the plaintiffs thereafter filed a motion to remand the case to state court and relied upon the pendency of that motion as a basis for opposing transfer of *Three J Farms* to M.D.L. 310 pursuant to 28 U.S.C. §1407. On October 13, 1978, before the question of remand had been briefed, Judge Chapman of the District Court for the District of South Carolina inadvertently ordered the matter remanded to state court. On October 26, 1978, Judge Chapman held his October 13 order to have been entered "by mistake and inadvertence," declaring that order to have been "null and void as of the date of issue." It was during the interval between October 13 and 26 that the *Three J Farms* plaintiffs requested the discovery and *ex parte* order referred to above. After the matter had been fully briefed, the federal court held the action to have been properly removed. Three J Farms, Inc. v. Alton Box Board Co., 1979-1 Trade Cas. ¶ 62,423 (D.S.C. 1978). On plaintiffs' appeal from that order, the Court of Appeals for the Fourth Circuit directed the remand of *Three J Farms* to state court. Three J Farms, Inc. v. Alton Box Board Co., 609 F.2d 112 (4th Cir. 1979). The decision of the court of appeals, however, was based solely on the ground that the inadvertently entered order of October 13, 1978, divested the district court of jurisdiction to proceed further with the case, even though the district court's inadvertence in effect prevented defendants' views on remand (which Judge Chapman later found meritorious) from ever being heard. 609 F.2d at 115. On February 25, 1980, this Court denied defendants' petition for a writ of certiorari in *Three J Farms*. 445 U.S. 911 (1980); *see* Petition, App. 2, at 9a.

> from preparing, disseminating or utilizing any settlement document in connection with any action pending in any Court wherein such settlement document contains any release of any anti-trust claims under the laws of the State of South Carolina without the prior approval of [the South Carolina state] Court.[8]

The *Three J Farms* plaintiffs have continued to state their intention to seek enforcement of this *ex parte* order if they are permitted to pursue their claims in state court, threatening to seek sanctions in the South Carolina state court for violation of the purported injunction order of that court.[9]

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[8](R. 126-27.) This order was aimed directly at the two agreements of settlement that by then had been entered into and filed with the District Court in M.D.L. 310, as well as additional agreements that might have been (and were) thereafter concluded. Petitioners' allusions to the supposed basis upon which the South Carolina judge entered this order (Petition at 4, 12) are not supported by anything in the record in this or the *Three J Farms* litigation. Rather, that order was entered upon an *ex parte* petition, of which the defendants had no notice, and was not supported by any findings or any other factual record. Contrary to the implication in the Petition, the parties to M.D.L. 310 did not ignore this purported injunction by proceeding to reach further settlements. (*See* Petition at 4.) The settlements were concluded while *Three J Farms* was pending in the federal courts and no effort was made then to enforce the *ex parte* restraining order.

[9]*See* Letter from I. Walton Bader, Counsel for Petitioners, to Clerk, United States Court of Appeals for the Fifth Circuit, May 15, 1981 (reproduced in pertinent part in Appendix B to this Brief). As recognized by the South Carolina District Judge who denied the *Three J Farms* plaintiffs' motion to remand their case to state court, the interference that this injunction could have caused to M.D.L. 310 is clear because enforcement of such an order would make it

> impossible for the Texas court to effectively manage the pretrial proceedings, and possible settlements that may occur along the way, without checking with the South Carolina Circuit Judge then presiding in Spartanburg County.

1979-1 Trade Cas. ¶ 62,423, at 76,549. The Court of Appeals similarly concluded that "[s]uch a limitation on the terms of settlement would clearly interfere with the multidistrict court's ability to dispose of the broader action pending before it." (Petition, App. 2, at 11a-12a. *See also* Petition at 12.)

At the same me that they sought the state court restraining order, the *Three J Farms* plaintiffs filed papers in that court seeking the production to them in South Carolina of virtually all materials generated in M.D.L. 310 discovery, as well as materials the discovery of which had been denied to the plaintiff class by the District Court in M.D.L. 310. These class members thus sought production in the state court action of, among other things, (1) all documents delivered by defendants to any grand jury investigating the corrugated container industry, (2) all documents contained in any document depository in M.D.L. 310, and (3) all grand jury transcripts in defendants' possession.[10]

### C. Petitioners' Appearances in the District Court

*Three J Farms* demonstrated the intention of the Petitioners who are plaintiffs in that case and their attorneys to pursue duplicative litigation and to seek through such efforts to disrupt and interfere with proceedings in M.D.L. 310. It was while *Three J Farms* still remained in the federal courts during the pendency of appellate proceedings concerning the remand issue,[11] however, that the plaintiffs in that case, joined by other

[10](R. 129-30.) This and other conduct of the *Three J Farms* plaintiffs and their attorneys "shocked the conscience" of the South Carolina federal District Judge, who stated:

> What the plaintiffs' attorneys obviously wish to do is sit in South Carolina and have copies of all depositions, documents and exhibits produced and developed in M.D.L. No. 310 packaged and mailed to them so they may share the benefits of the Texas proceedings without any of the expenses or inconveniences. Such an action would put the defendants in an impossible position of running back and forth between the Texas and South Carolina courts producing the same documents and information in both places. This would destroy the effectiveness of the Judicial Panel on Multidistrict Litigation and for all practical purposes eradicate 28 U.S.C. 1407.

1979-1 Trade Cas. ¶ 62,423, at 76,549.

[11]After denial of defendants' petition for a writ of certiorari regarding the remand of *Three J Farms*, that case was remanded to state court. The

*(continued)*

named and unnamed M.D.L. 310 class members, confirmed this objective and brought their past efforts and future plans to the attention of the District Court. Thus, these class members, not having opted out after notice was given to the class, entered appearances in M.D.L. 310 and requested various kinds of relief from the District Court, all of which were based upon their expressed desire to share in the M.D.L. 310 settlements and simultaneously to pursue duplicative litigation in state court based upon claims that had been compromised by those settlements.[12] These class members sought relief designed to facilitate the prosecution of their purported "state law" claims in the state courts of various states, including South Carolina, Mississippi, North Carolina, California, New Jersey and possibly others.[13]

These efforts for the first time brought to the attention of the District Court the direct threat of interference by these class members with M.D.L. 310, as earlier evidenced in *Three J Farms*. Shortly thereafter, defendants requested injunctive relief from the District Court.[14]

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*Three J Farms* plaintiffs agreed to a formal stay of proceedings in the state court during the pendency of appellate proceedings relating to the District Court's injunction and Petitioners' objections to the M.D.L. 310 settlement judgments entered by the District Court. (*See* Petition, App. 2, at 9a.)

[12]In this manner, requests were made (1) to participate in the M.D.L. 310 settlements without releasing purported state law claims (R. 42-48), (2) to have pending settlements disapproved unless they excluded the release of state law claims (R. 35-41, 56-70), and (3) to decertify the class, disqualify class counsel and pursue purportedly related discovery (R. 49-55). These papers were filed on behalf of varying groups of M.D.L. 310 class members, including the plaintiffs in *Three J Farms* and their co-Petitioners London Dry, Ltd., Tabor City Foods, Inc., and South Carolina Peach Growers Association.

[13](R. 37-40, 52-53, 62-63.) Petitioners' brief in the Court of Appeals added Kansas, New Mexico, Wisconsin and Georgia to the list of states where such litigation apparently was contemplated.

[14]The requested relief was virtually identical to that ordered by another federal district court only a few months earlier in another multidistrict

*(continued)*

**D. The District Court's Findings and Injunction Order**

It was against this factual background that the District Court found that these M.D.L. 310 class members "threaten[ed] [the District Court's] exercise of its proper jurisdiction and the effectuation of its judgments in M.D.L. 310 by prosecuting duplicative litigation . . . and seeking therein orders disrupting, *inter alia*, the conduct of discovery and settlement negotiations in M.D.L. 310" and that Petitioners would "multiply litigation, interfere with this Court's exercise of its lawful jurisdiction and the effectuation of its judgments. . . ." (R. 181-83; Petition, App. 1, at 1a-4a.)[15]

On the basis of these findings and at the unanimous urging of all parties to the M.D.L. 310 class actions, the District Court entered the injunction that Petitioners seek to have this Court review. That order enjoins prosecution by Petitioners of claims for alleged antitrust violations in the manufacture or sale of corrugated containers or sheets other than as part of M.D.L. 310. (R. 182-83; Petition, App. 1, at 2a-3a.)

**E. The Court of Appeals' Ruling**

The Court of Appeals affirmed the District Court's injunction order, recognizing that Petitioners had not challenged the factual findings of the District Court on which the order was based. (Petition, App. 2, at 9a, 11a-13a.)[16] The Court

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proceeding upon stipulation of Petitioners' counsel and Petitioner London Dry, Ltd. (R. 147-49. *See* note 22 *infra*.)

[15]Moreover, the District Court found that Petitioners' attorneys likewise had manifested their intention to continue to take "actions threatening this Court's exercise of its proper jurisdiction and effectuation of its judgments, by filing and threatening to file duplicative and harassing litigation in the courts of various states and by seeking therein orders disrupting the proceedings in M.D.L. 310." (R. 183; Petition, App. 1, at 3a.) Although they are subject to the District Court's injunction and they appealed to the Court of Appeals from that order, Petitioners' counsel have not joined in the Petition as Petitioners.

[16]The Court of Appeals concurred in those findings: "The multidistrict court perceived that the actions of the appellants in pursuing substantially

*(continued)*

of Appeals recognized the significance of Petitioners' status as M.D.L. 310 class members and concluded that the order was necessary to protect the District Court's exercise of jurisdiction over the M.D.L. 310 class actions and to protect and effectuate the M.D.L. 310 judgments from collateral attack by Petitioners. (Petition, App. 2, at 11a-13a.)

## REASONS FOR DENYING THE WRIT

Petitioners' statement of the issues suggests a number of grounds on which they contend review by this Court is appropriate. Based upon the record in this proceeding, these are clearly false issues premised upon a mischaracterization that Petitioners have been improperly denied a right to pursue "state claims." In this manner, Petitioners contend that (1) there is a conflict among the circuits created by the decision of the Court of Appeals, and (2) the decisions of the Courts below are not in accord with controlling precedent of this Court and raise important issues of federal law that this Court should resolve.

In so doing, Petitioners largely ignore the matter actually addressed by the Court of Appeals: whether, based upon the District Court's uncontroverted findings, it was not an abuse of discretion to enjoin these class members and their attorneys from pursuing duplicative, harassing litigation in state courts. As set forth in the following sections of this Brief, there is in fact no conflict among the circuits on this issue, nor would review by this Court of the orders of the Courts below be appropriate for any other reason.

### I. There Is No Conflict Among the Circuits With Respect to the Subject of This Proceeding

Petitioners contend that the Court of Appeals' affirmance of the District Court's injunction order is in conflict with three

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similar state law claims in the South Carolina court would be a challenge to [the District Court's] jurisdiction. We agree." (Petition, App. 2, at 11a.)

decisions of other courts of appeals, *National Super Spuds, Inc. v. New York Mercantile Exchange*, 660 F.2d 9 (2d Cir. 1981), *In re General Motors Corp. Engine Interchange Litigation*, 594 F.2d 1106 (7th Cir. 1979), and *In re Sugar Antitrust Litigation (State of California v. California and Hawaiian Sugar Co.)*, 588 F.2d 1270 (9th Cir. 1978). (*See* Petition at 13, 19-20.) Unlike this case, however, none of those cases involved an injunction order entered to protect the jurisdiction and judgments of a federal court. Instead, as will be discussed in turn, each involved completely different issues that were not before the Court of Appeals in this case. Accordingly, there is no conflict.

*National Super Spuds* was an appeal from a district court order approving a class action settlement; unlike this case, that case did not involve a district court injunction of prosecution of duplicative state court litigation. On that basis alone, it is clear that these cases involved wholly disparate issues and hence cannot be in conflict.[17]

Moreover, even assuming *arguendo* that questions of the propriety of settlement approval could be raised here by Petitioners, their claim of impropriety regarding the District Court's approval, over Petitioners' objections, of M.D.L. 310 settlements that release state law claims purportedly not pleaded in the M.D.L. 310 complaints (Petition at 12-13, 19)

[17]Although, as will be shown, the issues involved in the settlement approval in *National Super Spuds* greatly differed from those raised by Petitioners' settlement objections in M.D.L. 310 (*see* pp. 12-13 *infra*), the fact remains that questions regarding approval of the M.D.L. 310 settlements could have been, and were, raised in Petitioners' separate appeal from the settlement judgments, and those matters were not even before the Court of Appeals in this case. Petitioners' almost total failure to discuss or analyze in their Petition the decision of the Court of Appeals that they purportedly seek to have this Court review demonstrates their obvious desire to confuse two different appeals and thereby, through this proceeding, to pursue matters that they have failed to pursue in connection with that other appeal. Petitioners cannot be permitted to use this proceeding to raise issues decided against them in another appeal, from which they did not seek review in this Court.

nevertheless does not show a conflict with *National Super Spuds*. In *National Super Spuds*, the court of appeals held that a class action settlement should not have been approved to the extent that the settlement would have released claims that were not, and could not have been, prosecuted by the class representatives. The class certified in that case related only to alleged claims by a class of persons who had bought and then sold certain potato futures contracts, while the unpleaded claims belonged to persons who claimed to have been injured by reason of their failure to sell such contracts. As the court of appeals concluded, the latter group of purchasers were simply not members of the class with which the settlement was reached, the class notice had not referred at all to the possibility that such unpleaded claims would be barred by the settlement, nor would a judgment after trial have barred the unpleaded claims. 660 F.2d at 13-18. In sum, the unpleaded claims were "different from those asserted in the [class] action." *Id.* at 13 n.4.

In contrast to the circumstances presented in *National Super Spuds*, Petitioners in this case admittedly are members of the M.D.L. 310 class, their purported state law claims—albeit couched in terms of a different legal theory—are the very same claims of alleged price-fixing pleaded by the class action plaintiffs in M.D.L. 310, and the class notice in this case clearly stated that the then-proposed settlements would release claims under both federal and state law.[18] The M.D.L. 310 settlements thus have no similarity to the settlement in question in *National Super Spuds*.[19]

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[18]In fact, Petitioners' settlement objections in M.D.L. 310 were premised in part upon the provision in the claim form included in the class notice stating expressly that, if the settlements were approved, claims under state law would be barred by these settlements to class members who did not opt out of the class. (R. 42-45.)

[19]In contrast to the pleaded and unpleaded claims in *National Super Spuds*, which were clearly separate and distinct because they were based

*(continued)*

Likewise, *In re General Motors Corp. Engine Interchange Litigation*, 594 F.2d 1106 (7th Cir.), *cert. denied*, 444 U.S. 870 (1979), involved matters obviously not involved in this case. That case, as *National Super Spuds*, dealt with questions regarding class action settlement approval—issues that simply were not before the Court of Appeals in this proceeding. *See*

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upon completely different transactions, Petitioners' repeated reference to their purportedly separate federal and "state law" antitrust claims based upon the same alleged conduct defies both logic and precedent. A cause of action, such as one for alleged antitrust violations, consists not of a claim under federal, state or some other law, but rather of a set of operative facts that entitles a party to legal relief. Thus, purportedly separate federal and state antitrust claims constitute but one cause of action that may not be split. *See, e.g.*, Woods Exploration & Producing Co. v. Aluminum Co. of America, 438 F.2d 1286, 1315 (5th Cir. 1971), *cert. denied*, 404 U.S. 1047 (1972) (state antitrust laws held to be only an alternative ground for recovery for violation of same primary right alleged in federal action); Engelhardt v. Bell & Howell Co., 327 F.2d 30, 32-33 (8th Cir. 1964) (claim previously resolved under state antitrust laws could not be relitigated under federal antitrust laws even though the different statutes may provide different measures of damages). *See also* Ford Motor Co. v. Superior Court, 35 Cal. App. 3d 676, 679, 110 Cal. Rptr. 59, 61 (1973); Silver v. Queen's Hospital, 629 P.2d 1116, 1122 (Hawaii 1981); Belliston v. Texaco, Inc., 521 P.2d 379 (Utah 1974); McCann v. Whitney, 25 N.Y.S.2d 354, 355 (Sup. Ct. 1941).

As Petitioners recognize (*see* Petition at 9), the federal courts unquestionably have pendent jurisdiction over state law claims based upon the same facts as a federal antitrust claim. United Mineworkers of America v. Gibbs, 383 U.S. 715, 721-29 (1966). (In fact, Petitioners' counsel have pleaded such pendent claims under South Carolina law in other federal antitrust litigation. (R. 132-45.)) Moreover, as the foregoing case law confirms, when such pendent claims are not pleaded in a federal complaint, a judgment on the federal claims nevertheless bars such state law claims, even if the judgment does not expressly state that it relates to claims under state law. *See also* Harper Plastics, Inc. v. Amoco Chem. Corp., 657 F.2d 939, 944-48 (7th Cir. 1981). The court of appeals in *National Super Spuds* recognized these principles in concluding that the unpleaded claims in that case would not have been barred by a judgment after trial of the class action, while expressly contrasting that situation with the kind of circumstances presented here, where "a settlement could properly be framed so as to prevent class members from subsequently asserting claims relying on a legal theory different from that relied upon in the class action complaint but depending upon the very same set of facts." 660 F.2d at 18 n.7.

594 F.2d at 1113. Moreover, the court of appeals in that case disapproved a settlement order because it sought to compromise the claims of certain class members despite their having elected not to participate in the settlement and where their nonparticipation would have meant that the defendant gave nothing in exchange for the release of such claims against it. *Id.* at 1133-35. The court did not question the propriety of the portion of the settlement providing that class members who opted for the settlement package—as the Petitioners who chose not to opt out of the class in this case—released their claims under *both* federal and state law. *See id.* at 1133 & n.47. In short, *Engine Interchange* presents no conflict with the Court of Appeals' decision in this case.[20]

The Court of Appeals' decision in this case also clearly is not in conflict with *In re Sugar Antitrust Litigation*, 588 F.2d 1270 (9th Cir. 1978), *cert. denied*, 441 U.S. 932 (1979). The court of appeals in *Sugar* held that federal *removal* jurisdiction did not exist over the state law antitrust claims pleaded in that

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[20]As in *National Super Spuds*, the court of appeals in *Engine Interchange* distinguished the unique settlement before it from the kind of settlement involved in this case. 594 F.2d at 1134-35 & n.51. In addition, the district court in *Engine Interchange* had expressly declined to assert pendent jurisdiction over state law claims presented by the pleadings (*see id.* at 1134), whereas here the District Court did assert such jurisdiction by means of the order requiring Petitioners to pursue their state law claims in that federal court. (R. 86, 181-83.)

The absence of a conflict between the Fifth and Seventh Circuits is further confirmed by the recent decision of the latter court in *Harper Plastics, Inc. v. Amoco Chemicals Corp.*, 657 F.2d 939 (7th Cir. 1981). In *Harper Plastics*, the court of appeals affirmed a district court's order enjoining prosecution of a lawsuit in state court where that lawsuit had been filed in an attempt to relitigate, under state law theories, the same antitrust claims resolved against the plaintiff in prior federal court litigation. *Id.* at 941-43, 944-47. The court held that the injunction was proper even though the plaintiff had not pleaded his claims under state law in the federal court action. *Id.* at 946-47. Thus, the Fifth and Seventh Circuits are in complete accord on the pertinent issue—whether a federal court can enjoin relitigation of its judgments in a state court lawsuit.

case, so that remand of those claims to state court was required. *Id.* at 1270-73.[21] In contrast, this case simply does not involve any question of removal and thus clearly cannot be in conflict with *Sugar*. In fact, in *Sugar* the court of appeals suggested the very same kind of injunctive relief entered by the District Court in this case as an alternative means of ensuring that duplicative state court litigation did not interfere with related complex, multidistrict proceedings in federal court where removal is not possible.[22]

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[21]That decision may be inconsistent with this Court's opinion in *Federated Department Stores, Inc. v. Moitie*, 101 S. Ct. 2424, 2427 n.2 (1981), as it relates to the question of removal. Nevertheless, the order here in question has nothing to do with removal and, contrary to the suggestion in the Petition (*see* Petition at 13-14), defendants do not rely on *Moitie* – a case dealing with wholly different issues – as support for the order here in question.

Moreover, Petitioners' assertion that the discussion in *Sugar* of federal preemption of state antitrust laws conflicts with the Court of Appeals' decision in this case (*see* Petition at 15) also results from a further mischaracterization of the order here in question, which simply was not based on the preemption doctrine. (*See* note 33 *infra*.) Equally irrelevant to the order in question, as the Court of Appeals recognized (*see* Petition, App. 2, at 14a-15a), is Petitioners' belated claim, contrary to their complaint in state court, that one of them is an "indirect purchaser" in addition to being a direct-purchaser member of the M.D.L. 310 class (*see* Petition at 18). In any event, it has been held that indirect purchasers may not recover damages under South Carolina's antitrust laws and that those antitrust laws do not apply to activities, such as the conduct alleged in *Three J Farms*, primarily in interstate commerce. In re Wiring Device Antitrust Litigation, 498 F. Supp. 79, 84-88 (E.D.N.Y. 1980).

[22]As the court stated: "Where the purpose is not to bring the challenged action to trial but to stay it, in order to eliminate complicating and overlapping litigation, a forthright motion to enjoin state action would focus on the true problem more accurately and would more directly present the values that are competing for accommodation." 588 F.2d at 1273 n.7.

Petitioners' claim that a conflict exists between this case and the *Sugar* litigation is further belied by the fact that relief virtually identical to that granted by the District Court in this case also was granted in *In re Eastern Sugar Antitrust Litigation*, M.D.L. 201A (E.D. Pa.), with respect to the claims of one of the Petitioners, London Dry, Ltd. There, as here, Petition-

*(continued)*

Accordingly, the order of the Court of Appeals is not in conflict with any of the decisions cited by Petitioners, and a writ of certiorari should not be granted on the basis of a conflict among the courts of appeals.

## II. The Court of Appeals' Decision Is in Accord With Controlling Decisions of This Court and Raises No Important, Unsettled Questions of Federal Law

Again based upon the false premise that they have been denied a right to pursue state law claims, Petitioners contend that a writ of certiorari should be granted because the Court of Appeals' decision in this case allegedly conflicts with case law of this Court under (1) 28 U.S.C. §2283, the so-called "Anti-Injunction Act," and (2) the fifth and tenth amendments to the Constitution of the United States. (*See* Petition at 12, 15-17.)[23] In fact, however, the Court of Appeals' affirmance of the order here in question does not conflict with any decisions of this Court and clearly is in accord with authority from this and other federal courts, so that the Petition truly raises no unsettled questions of federal law that need to be resolved by this Court.

### A. The Orders of the Courts Below Do Not Violate 28 U.S.C. §2283

Petitioners contend that, in affirming the District Court's injunction order, the Court of Appeals violated 28 U.S.C.

ers' counsel had filed a complaint in South Carolina state court alleging claims identical to those involved in multidistrict litigation pending in federal court. After removal by the defendants and conditional transfer to the multidistrict proceeding, the defendants moved for an injunction to prevent interference with the federal court's jurisdiction, and, upon stipulation of the parties, the district court entered a permanent injunction requiring London Dry, Ltd., and its attorneys to prosecute their claims only as part of the multidistrict litigation. (R. 147-49.)

[23]Petitioners also suggest that, because of the alleged denial of their rights to pursue claims under state law, the Court of Appeals held that such state law claims were preempted by federal antitrust law. (*See* Petition at 13-15, 21.) In fact, no question of preemption was raised or decided in the District Court or Court of Appeals in this case. (*See* note 33 *infra*.)

§2283 and the principles established in case law decided under that statute.[24] A substantial portion of the District Court's order, however, relates to threatened rather than pending state court litigation and hence is not even within the scope of section 2283.[25] Moreover, to the extent that section 2283 applies to the order in question because it enjoins prosecution of *Three J Farms* in state court, that order fits squarely within the express exceptions in that statute authorizing the issuance of injunctions to stay state court proceedings "where necessary in aid of [the federal court's] jurisdiction, or to protect or effectuate its judgments," and is in full accord with pertinent decisions of this Court and other well-established federal case law.

As the Court of Appeals concluded, the injunction order entered by the District Court was designed to prevent substantial, unwarranted interference with the conduct of proceedings in M.D.L. 310 by requiring Petitioners to pursue their antitrust claims as a part of this litigation. (*See* Petition, App. 2, at 11a-13a.) Such relief clearly is "necessary in aid of" the preexisting federal jurisdiction over M.D.L. 310, for, in the words of this Court, it is "necessary to prevent a state court from so interfering with a federal court's consideration or disposition of a case as to seriously impair the federal court's flexibility and authority to decide that case." *Atlantic Coast Line R.R. v.*

[24]This statute provides:

> A court of the United States may not grant an injunction to stay proceedings in a State court except as expressly authorized by Act of Congress, or where necessary in aid of its jurisdiction, or to protect or effectuate its judgments.

28 U.S.C. § 2283.

[25]Section 2283 does not apply to the portions of the District Court's order directed to prosecution by class members and their attorneys of as yet unfiled lawsuits. *See, e.g.*, Dombrowski v. Pfister, 380 U.S. 479, 484 n.2 (1965); United States v. District of Columbia, 654 F.2d 802, 811 & n.20 (D.C. Cir. 1981); Albright v. R. J. Reynolds Tobacco Co., 463 F. Supp. 1220, 1228-29 (W.D. Pa. 1979). As this Court has stated: "This statute and its predecessors do not preclude injunctions against the institution of state court proceedings ...." 380 U.S. at 484 n.2.

*Brotherhood of Locomotive Engineers*, 398 U.S. 281, 295 (1970); *see* Petition, App. 2, at 11a. *See also International Ass'n of Machinists & Aerospace Workers v. Nix*, 512 F.2d 125, 130 n.6 (5th Cir. 1975). The pendency of such "spinoff" state court litigation, based upon nothing more than a carbon copy of the complaints in the ongoing complex, nation-wide, antitrust litigation in the District Court, can, as *Three J Farms* has confirmed, only result in undue interference with the federal court's "consideration or disposition" of M.D.L. 310, "impair[ing] the federal court's flexibility and authority" to resolve that litigation.

The history of the *Three J Farms* plaintiffs' attempts to disrupt the settlement proceedings and the discovery process in M.D.L. 310 provided direct evidence of these kinds of problems. So too did these class members' attorneys' promises of a repetition of these tactics in numerous other jurisdictions. Such interference, if successful, clearly would impair the District Court's flexibility as well as its authority. For example, if the temporary restraining order of the South Carolina court purporting to enjoin settlement negotiations in M.D.L. 310 had been enforced, the parties before the District Court might have found themselves facing contempt charges for entering into settlement agreements in the federal court litigation and even for securing approval by the District Court of those agreements. A clearer and more direct interference with the District Court's jurisdiction is hard to imagine, and injunctive relief is appropriate in such circumstances.[26]

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[26] *See, e.g.*, Looney v. Eastern Texas R.R., 247 U.S. 214 (1918); Swann v. Charlotte-Mecklenberg Bd. of Educ., 501 F.2d 383 (4th Cir. 1974); D. G. Bland Lumber Co. v. N.L.R.B., 177 F.2d 555, 558 (5th Cir. 1949); American Insurance Co. v. Lester, 214 F.2d 578 (4th Cir. 1954); Complaint of Cosmopolitan Shipping Co., 453 F.Supp. 268, 270-72 (S.D.N.Y. 1978); Bekoff v. Clinton, 344 F. Supp. 642, 646 (S.D.N.Y. 1972); 1A, Pt. 2 Moore's Federal Practice ¶ 0.227 at 2626 (2d ed. 1981). *See also* Yuba Consolidated Gold Fields v. Kilkeary, 206 F.2d 884 (9th Cir. 1953).

Thus, it was the District Court's need to preserve its ability to continue to manage this litigation that necessitated the injunction to prevent further interference by Petitioners with the M.D.L. 310 proceedings. (*See* pp. 6-10 *supra.*) As the Court of Appeals concurred: "This complicated antitrust action has required a great deal of the district court's time and necessitates its ability to maintain a flexible approach in resolving the various claims of the many parties." (Petition, App. 2, at 11a.) Such findings by the District Court, which are unchallenged by Petitioners and were confirmed by the Court of Appeals, demonstrate that this order is fully consistent with this and other federal courts' application of section 2283.

Section 2283 also expressly authorizes injunctions to "protect or effectuate" federal court judgments, and this provision is equally applicable in the circumstances of this case. Pursuant to settlements with the nationwide plaintiff class certified in M.D.L. 310, judgments have been entered dismissing the claims of class members who did not opt out of the class—including Petitioners—against 29 of the defendants in this litigation, all of which also were named as defendants in the *Three J Farms* complaint. The injunction entered by the District Court thus was necessary to protect and effectuate these judgments and to prevent relitigation in state court of the claims merged therein—a clearly established basis for granting injunctive relief under section 2283. *See, e.g., Mitchum v. Foster,* 407 U.S. 225, 236 (1972); *Supreme Tribe of Ben-Hur v. Cauble,* 255 U.S. 356, 367 (1921) (federal courts have jurisdiction over action to enjoin class members from relitigation in state court of matters resolved by class action judgment entered in federal court); *Woods Exploration & Producing Co. v. Aluminum Co. of America,* 438 F.2d 1286, 1315-16 (5th Cir. 1971). [27]

[27] As in *Woods*, the "state and federal antitrust claims here are . . . simply alternative grounds of recovery for the same causes of action." 438 F.2d at

*(continued)*

The cases cited by Petitioners as being in conflict with the orders of the Courts below in this case (*see* Petition at 15-16) stand merely for the general proposition that section 2283 reflects a congressional desire that federal courts ordinarily should not interfere with state court proceedings. These cases, which involved either belated efforts to obtain federal court review of a state court ruling[28] or an attempt to enjoin state

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1315; *see* note 19 *supra*. Although the policy underlying section 2283 is to prevent friction between the state and federal judiciaries, "'nothing would be as productive of friction between the state and the federal courts as to permit a state court to interpret and perhaps to upset such a judgment of a federal court.'" International Ass'n of Machinists & Aerospace Workers v. Nix, 512 F.2d 125, 130 (5th Cir. 1975), *quoting* Jacksonville Blow Pipe Co. v. Reconstruction Finance Corp., 244 F.2d 394, 400 (5th Cir. 1957). *See also* Donelon v. New Orleans Terminal Co., 474 F.2d 1108, 1113-14 (5th Cir.), *cert. denied*, 414 U.S. 855 (1973) (state proceedings held properly enjoined to protect rule 54(b) partial judgment from relitigation by parties who had submitted themselves to the jurisdiction of the district court, which still had the remainder of the controversy before it).

Moreover, injunctive relief was properly granted by the District Court under section 2283 to protect and effectuate the numerous discovery and other pretrial orders entered in M.D.L. 310, many of which concerned issues that were or surely would be raised again by Petitioners in state court. *See, e.g.*, Doe v. Ceci, 517 F.2d 1203 (7th Cir. 1975) (injunction of enforcement of state court order was proper to protect federal court's preliminary injunction); Sperry Rand Corp. v. Rothlein, 288 F.2d 245, 248-49 (2d Cir. 1961) (discovery order of federal court held to be "judgment" that could be protected by enjoining use in state court of documents and information produced in federal court litigation, thus effectively preventing prosecution of state court litigation).

[28] *See* Vendo Co. v. Lektro-Vend Corp., 433 U.S. 623, 626 (1977) (request to enjoin enforcement of state court judgment obtained after nine years of litigation in state court); Mitchum v. Foster, 407 U.S. 225, 227 (1972) (action to enjoin enforcement of state court order obtained by county prosecuting attorney prohibiting operation of bookstore); Atlantic Coast Line R.R. v. Brotherhood of Locomotive Engineers, 398 U.S. 281, 283 (1970) (request by labor union for injunction to prevent enforcement of state court injunction obtained by railroad prohibiting picketing by the union); Smith v. Apple, 264 U.S. 274, 275 (1924) (action to enjoin enforcement of allegedly unconscionable and void judgments obtained in state court). Moreover, *Smith v. Apple* involved only the question of whether the dismissal of a

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court litigation even though no showing was made that the case was within one of the statutory exceptions to section 2283,[29] are simply inapposite here.[30]

Nor is the injunction entered by the District Court in conflict with the general principle of avoiding federal-state friction underlying the cases cited by Petitioners. The situations presented in such cases were a far cry from the totality of circumstances in this case, where a group of class members and their attorneys have sought and threatened to seek to pursue duplicative litigation in numerous state courts throughout the country for the purposes of attacking the judgments and orders of a federal court and interfering with the proceedings in a complex, multi-party litigation in the federal forum.[31]

federal complaint on the basis of a predecessor to section 2283 was a dismissal on the merits or on jurisdictional grounds. *See* 264 U.S. at 277-80.

[29]Southern California Petroleum Corp. v. Harper, 273 F.2d 715, 719 (5th Cir. 1960) (state court litigation found to involve matters entirely distinct from those adjudicated in earlier federal court litigation). *Toucey v. New York Life Ins. Co.*, 314 U.S. 118 (1941), also cited by Petitioners, was a decision to discard the judicially created exception to the predecessor to section 2283 permitting injunctions to prevent relitigation of federal court judgments in state court. This ruling in *Toucey* was overturned by Congress in 1948 when it enacted the current version of the Anti-Injunction Act. *See* Mitchum v. Foster, 407 U.S. 225, 236 (1972).

[30]In some of these cases, the Court applied the general rule that the pendency of two or more *in personam* actions between the same parties based upon the same causes of action does not ordinarily permit either court to enjoin prosecution of the parallel case pending in the other. *See, e.g.*, Vendo Co. v. Lektro-Vend Corp., 433 U.S. 623, 642 (1977). The frequently expressed evil at which section 2283 is aimed in such circumstances is the possibility of having federal district courts sit in appellate review of state court rulings. *See, e.g.*, Atlantic Coast Line R.R. v. Brotherhood of Locomotive Engineers, 398 U.S. 281, 296 (1970). This general rule, and the concerns to which it is addressed, are not at all applicable in situations where, as here, there are duplicative claims asserted in extremely complex lawsuits, where there is a record of direct interference, both actual and threatened, with preexisting federal court proceedings and attempts to relitigate federal court judgments, and where coordination of all such claims is the remedy sought.

[31]As the Court of Appeals concluded: "[T]he policies of federalism are not flouted by this injunction.... [T]he South Carolina court could not be

*(continued)*

Moreover, unlike the orders involved in the cases cited by Petitioners, the order here in question does not attempt to restructure relief obtained in a state court or to preclude assertion of the claims sought to be asserted in state court, but rather merely requires that those claims, to the extent they exist, be asserted in the federal forum. This limited relief was necessary to preserve the jurisdiction of the District Court and to protect and effectuate its judgments and orders; it is clearly permitted by section 2283 and is entirely consistent with the case law applying that statute.

**B. Petitioners' Constitutional Arguments Are Meritless**

Petitioners' contentions that the orders of the District Court and Court of Appeals conflict with the fifth and tenth amendments to the United States Constitution require little analysis to see their obvious lack of merit. Significantly, Petitioners have cited *not one case* from this or any other court decided under either of these constitutional amendments, nor have they explained how the supposed denial of Petitioners' constitutional rights occurred. On that basis alone, the Court of Appeals quite properly described these arguments as "frivolous." (Petition, App. 2, at 14a.)

Moreover, contrary to Petitioners' erroneous interpretation of the District Court's order, which provides the only perceptible premise for their "due process" contention, the injunction order does not enjoin enforcement of South Carolina antitrust laws. Rather, it only provides that appellants may not pursue whatever claims they may have under such state laws in a forum other than the District Court. (R. 182-83; Petition, App. 1, at 2a-4a.) Petitioners' conscious choice not to opt out of the M.D.L. 310 class, rather than the injunction order, sacrificed whatever rights they might have had to pursue claims outside of M.D.L. 310. Furthermore, as the Court of

offended by losing the opportunity to entertain a harassing lawsuit." (Petition, App. 2, at 13a.)

Appeals recognized, Petitioners were free to "protect their state law claims by asserting them as pendent claims in the federal forum. Thus, there is no deprivation of property." (Petition, App. 2, at 14a.)

Petitioners' reliance upon the tenth amendment is equally meritless. The power that underlies the order in question, namely, the power to protect the jurisdiction and judgments of the federal courts, is one clearly not reserved to the states, but rather is embodied in the All Writs Act, 28 U.S.C. §1651, and section 2283 in order to protect the judiciary power expressly granted to the federal government by Article III of the Constitution.[32] The considerations underlying the tenth amendment simply have no applicability in such circumstances.[33]

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[32] *N.L.R.B. v. Jones & Laughlin Steel Corp.*, 301 U.S. 1 (1937) (*see* Petition at 17), concerned the reach of the commerce clause and not a possible conflict between the tenth amendment and the judiciary power. *See* 301 U.S. at 29-30.

[33] Petitioners' suggestion that they somehow have been denied their constitutional rights because the District Court's order allegedly was based upon the doctrine of federal preemption (*see* Petition at 15) is based upon a clearly false premise. Nowhere in the District Court's injunction order, in the papers requesting such relief, or in the Court of Appeals' opinion is there any reference to the doctrine of preemption; the only basis asserted for that injunctive relief, the only one relied upon by the District Court and Court of Appeals, and the one that to this date remains undisputed by Petitioners, was the manifested threat of interference by Petitioners and their attorneys with the jurisdiction, judgments and orders of the District Court. Indeed, the District Court's order expressly provides that the injunction granted therein is not to be construed to determine whether or not prosecution of any action affected by the order would be barred for reasons other than those addressed by that order. (R. 183; Petition, App. 1, at 4a.)

## CONCLUSION

For all of the foregoing reasons, the Petition for a Writ of Certiorari should be denied in all respects.

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# Appendix

## APPENDIX A

Pursuant to rule 28.1 of the Rules of the Supreme Court, Defendants-Respondents on whose behalf this Brief is filed provide the following information about their respective parent companies, subsidiaries (except wholly owned subsidiaries) and affiliates:

*Alton Packaging Corporation*

Alton Packaging Corporation (formerly Alton Box Board Company) is a wholly owned subsidiary of Jefferson Smurfit Incorporated, which is a wholly owned subsidiary of Jefferson Smurfit Group, Ltd.

*Boise Cascade Corporation*

Subsidiaries and Affiliates: Boise Cascade Timberlands-Southeast; Boise Cascade Timberlands of Oregon; Boise Cascade Southern Company; Cuban Electric Company; Duropack Wellpappe Gmbh.; Cartonex Verpackungs Agentur Gmbh.; Anderoscoggin Reservoir Co.; D.S. Investment; Columbia Associate (Ltd.).

*Champion International Corporation* (including Hoerner Waldorf Corporation)

Subsidiaries: Weldwood of Canada, Limited; Papel e Celulose, S.A.; Industrias Madereras De Loreto, S.A.; Setter GmbH.

*Container Corporation of America*

Container Corporation of America is a wholly-owned subsidiary of Mobil Corporation.

*The Continental Group, Inc.*

Subsidiaries: Nihon Harrison Ltd.; National Cup & Container Co., Ltd.; Envolturas Industriales, S.A.; Shellmar de Columbia, S.A.; Convertidora Venezolana

de Papel, C.A.; Peachtree Generating Corp.; Fibro Tambor S.A. de C.V.; Braskraft S.A. Florestal c Industrial; The Vinoxen Company, Inc.; Containers Limited; Envases Generales Continental de Mexico, S.A.; Kuwait Metal Container Company, Ltd.; Continental Can Hong Kong, Limited; Continental Can Saudi Arabia, Ltd.; Doosan Continental Can Manufacturing Co., Ltd.; Fabricana Boliviana de Envases Sociedad Anonima; Industrias del Norte, S.A.; Continental Produtos Metalurgicos Ltda.; Metalurgica Matarazzo S.A.; Matcan Embalagens Ltda.; Mill Paper Fibres Limited; Schmalbach-Lubeca GMBH; Elbatainer France; Elbatainer (U.K.) Ltd.; Ets Schuybroek S.A.; Sobemi N.V.; Verblifa N.V.; De Clerck N.V.; Societe Pour le Developpement et L'Expansion D'Entreprises (SDE); The Life Insurance Company of Virginia; Lawyers Title of Arizona; Ontario Title Insurance Agency; Long & Melone, Ltd.; Sentinel Escrow, Ltd.; Lawyers Title Company of Idaho; St. Francis County Abstract Company, Inc.; Lawyers Abstract Corporation; Lawyers Abstract Company; Bayport General Agency, Inc.; Supron Energy Corporation (tender offer now pending); Dominguez Continental, S.A.

*Fibreboard Corporation*

Fibreboard Corporation is a wholly owned subsidiary of Louisiana-Pacific Corporation.

Subsidiaries of Louisiana-Pacific Corporation: H. C. Hodges Lumber Company of West Bay, Inc.; Hegewald Timber Company, Inc.; Louisiana-Pacific Corporation (W. Va.); Louisiana-Pacific Foundation; Louisiana-Pacific International, Inc.; Louisiana-Pacific Trucking Company; LPI, Inc.; Kenai Lumber Company; Ketchikan Pulp Company; Kreidel Plastics, Inc.; New Waver-

ly Transportation; Roy O. Martin Industries, Inc.; Sugar Pine Railway Company.

*Georgia-Pacific Corporation*

Subsidiaries and affiliates: Compania de Navegacion Arboreous, S.A.; Lianga Bay Logging Company, Inc.; P.T. Georgia-Pacific Indonesia; P.T. Kalimanis-Plywood Industries; Thacker Land Company.

*Inland Container Corporation*

Inland Container Corporation is a wholly owned subsidiary of Time, Inc.

Subsidiaries of Inland Container Corporation or one of its subsidiaries: Papelera de Canarias, S.A.; Georgia Kraft Company; Adelphi Land Investments, Ltd.; Harima M.I.D., Inc.; Primus Investors, Ltd.; JLW III; Owens-Illinois de Puerto Rico.

*International Paper Company*

Subsidiaries and Affiliates: Indian River Company; Envases Internacional S.A.; IPI Corporation; Arizona Chemical Company; Arizona Chemical Overseas Corporation; Arizona Chemical Service Corp.; Cargal Limited; I.M.I. Industrial Management and Investment Company Limited; Siron Trading Co. Ltd.; Productora de Papeles S.A. "PROPAL"; Sicilcartone S.r.l.; Socosic S.r.l. (in liquidation).

*Interstate Container Corporation*

Parent: Agri-Timber, Inc.

*MacMillan Bloedel Ltd.*

MacMillan Bloedel Ltd. is the parent company of Defendants-Respondents MacMillan Bloedel, Inc.; MacMillan Bloedel Containers, Inc., and MacMillan Bloedel Packaging, Inc.

*The Mead Corporation*

Subsidiaries and Affiliates: Altonaer-Wellpappenfabrik G.m.b.H.; British Columbia Forest Products Ltd.; Brunswick Pulp & Paper Co.; Europapel, S.A.; Grafi-carton, S.A.; Georgia Kraft Company; Gulf Supply Latina; Harima M.I.D.; Kraft Land Services, Inc.; Northwood Forest Industries Ltd.; Northwood Panel-board Company; Packagemaster Limited; Schoeller Photo Papers, Inc.; Schoeller Technical Papers, Inc.; Schoeller Technical Papers; Seaboard Paper Company; Mead Chemicals, Inc.; Mead-Emballage, S.A.; Mead Imballagi, S.p.A.; Mead-Toppan Company, Ltd.; Mead Verpackung G.m.b.H.; Mead Verpakking B.V.

*Menasha Corporation*

Subsidiary: New England Woodenware Company.

*Olinkraft, Inc.* (presently Manville Forest Products Corporation)

Parent: Johns-Manville Corporation.

*Owens-Illinois, Inc.*

Subsidiary: Duradrum Corporation.

*Packaging Corporation of America*

Parent: Tenneco Corporation, which is a wholly owned subsidiary of Tenneco, Inc.

Subsidiaries and Affiliates: Albright & Wilson (Australia) Ltd.; Gardinal Products (PTY), Ltd.; National Brands (PTY), Ltd.; Albright & Wilson Match Phosphorous Co. Ltd.; Marchon-Paragon Sulphonation (Cape) (PTY) Ltd.; Marchon-Paragon Sulphonation (PTY) Ltd.; Bush Boake Allen (Jamaica) Ltd.; GMB Proteins, Ltd.; Arndale Fuels, Ltd.; Bracey Petroleum

Products, Ltd.; Butler Oil Products, Ltd.; Tenneco Oil Products, Ltd.; Intertrac Viehmann GmbH & Co.; Tractortechnic Canada, Ltd.; Walker S.A.; Etablissement Robert Bellanger S.A.; Stoco Mutual Water and Sewer Co.; Houston Oil & Minerals of Colombia, Inc.; Agencies Petroleras, Ltda.; Monroe Autopecas S.A.; Collins Pipeline Co.; Kern Island Water Co.; Kern River Canal & Irrigating Co.; Mistal Inc.; T & M Terminal Co.; Nuodex Canada, Ltd.; Tenngasco Gas Gathering Co.; HT Gathering Co.; Losenhausen Maschinenbau A.G.; Vibromax France S.A.R.L.; J. I. Case S.W.A. (Proprietary) Ltd.; P. P. M. Guindastes Hydraulicos S.A.; S. A. Paper Chemicals (Proprietary) Limited; Somadoc N. V.; Societe Anonyme Industrielle De Resines; Depositas Del Norte, S.A.; Tees Storage Limited.

*Potlatch Corporation*

Subsidiary: St. Joe Boom Company.

*St. Joe Paper Company*

Subsidiaries: Florida East Coast Railway; Talisman Sugar Corp.; Jacksonville Properties, Inc.; New England Container Company; General Die Corp.; Holiday Inns of Northern Ireland, Ltd.; Holiday Motels, Ltd. (Ireland).

*St. Regis Paper Company*

Affiliates: Angelina & Neches River Railroad Company; Sylvachem Corporation.

*Southwest Forest Industries, Inc.*

Subsidiary: Distribuidora Cummins Diesel de Panama, S.A.

*Stone Container Corporation*

Subsidiaries: Sierra Pacific Container Corporation; Trans-Seal Corporation; Dean-Dempsey Corporation; L & M Corrugated Container Corporation.

*Union Camp Corporation*

Affiliates: Cargal Limited; Cartonajes Union, S.A.; Union Camp Ireland Ltd.; Precis 4O-9 Ltd.; Recor Corp.; Inglett & Company.

*U.S. Corrugated Fibre-Box Company*

U.S. Corrugated Fibre-Box Company is a wholly owned subsidiary of Lacy Diversified Industries, Inc.

Affiliates: U.S. Corrugated of Alabama, Inc.; U.S. Packaging Service, Inc.

*Weyerhaeuser Company*

Subsidiaries and Affiliates: Camac Veneer, Inc.; Mountain Tree Farm Co.; North Pacific Paper Corp.; Shemin Nurseries, Inc.; Weyerhaeuser International, Inc.; de Bes' Insurance, Ltd.; Forest Insurance, Ltd.; Kennedy Bay Timber Sendirian Berhad; Silam Forest Products Sendirian Berhad; Pacific Hardwoods Sendirian Berhad; Weyerhaeuser Europe, S.A.; Cornerstone Development Co.

*Willamette Industries, Inc.*

Subsidiaries and Affiliates: Freres Veneer Co.; Santiam Southern Co.; Western Kraft East, Inc.; Wimer Logging Co.; Taylor Development Co.

# APPENDIX B

* * *

May 15, 1981

Re: Three J Farms, Inc. et al.
vs.
Plaintiff's Steering Committee, etc.
No. 80-1164

Clerk, United States Court of Appeals
For the Fifth Circuit
600 Camp Street
New Orleans, La.

Dear Sir,

The undersigned has received a letter from Defendants' Counsel calling attention of the panel to subsequent developments in this case as having some bearing on the issues before this Court. We submit that, for the reasons set forth herein *infra* these developments have no bearing on the issue in the above appeal, namely, did the District Court have the power to interfere with State Court Proceedings which involved issues not before the District Court and where the State Court specifically issued an injunction to protect its jurisdiction.

* * *

Defendants point out that another panel of this Court has held (subject to a motion for reconsideration and for En Banc Reconsideration) that the District Court was within its discretion in approving a settlement of State Antitrust Claims even though not pleaded as part of a settlement of Federal Antitrust Claims. Assuming that this is correct this would amply justify the State Court in issuing its injunction since it desired to protect the rights of its State Claimants who would receive 100% of purchase price rather than the 1 to 2% received as part of the present settlement in the Federal Antitrust Actions.

We submit that, despite the decision of this Court in the settlement proceeding (which only determined the *discretion* of the District Judge to approve the settlement involved), the lifting of the present injunction will permit the undersigned to go back to the State Court of South Carolina and seek contempt proceedings against the defendants for the violation of the State Court Injunction in proceeding with the present settlement to the detriment of South Carolina State Claimants.

Defendants also call attention of the Court to the recent decision of the Supreme Court of South Carolina in the *General Supplies* case to the effect that, under South Carolina procedural law, no *Class Suit* can be brought for Antitrust violations.

The decision did not foreclose any type of general relief for parties injured by antitrust violations of South Carolina Antitrust Laws. For example, a remedy could be fashioned in equity (through Declaratory Judgment procedures). Also, of course, as suggested by the Fifth Circuit Panel on the argument of the prior appeal, an application could have been made to the State Court for permission to contact affected Class Members having claims under South Carolina Antitrust Laws are suggest that they "opt-out" of the Federal Action and intervene in the pending State Suit.

* * *

Respectfully,

/s/ I. WALTON BADER
I. Walton Bader

IWB/df

# Opposition

# 2

Supreme Court, U.S.
FILED
MAR 20 1982
ALEXANDER L. STEVAS
CLERK

No. 81-1391

IN THE

# Supreme Court of the United States

October Term, 1981

THREE J FARMS, INC., *et al.*,

*Petitioners,*

*vs.*

PLAINTIFFS' STEERING COMMITTEE, *et al.*,

*Respondents.*

**BRIEF FOR THE RESPONDENT PLAINTIFFS' STEERING COMMITTEE IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT.**

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**Counsel of Record.*

## Counter-Statement of the Question Presented for Review.

Whether the Court of Appeals correctly held that the District Court acted within its lawful discretion when it enjoined certain plaintiff class members, who had affirmatively appeared in the litigation below in response to a class action notice, from prosecuting duplicative actions in any forum other than the District Court, where such duplicative actions would have directly challenged the District Court's orders and judgments and interfered with the ability of the District Court to manage the complex multidistrict class action litigation pending before it?

# TABLE OF CONTENTS


| | Page |
|---|---|
| Counter-Statement of the Question Presented for Review | i |
| Statement of the Case | 2 |
| Reasons for Denying the Writ | 9 |
| 1. Petitioners Have Not Attempted to Show a Conflict Among the Circuits and Have Otherwise Failed to Raise Any Questions Worthy of Review Concerning the Application of 28 U.S.C. § 2283 | 10 |
| 2. No Important Question Has Been Presented for Review and No Conflict Among the Circuits Has Been Shown Concerning Any Asserted Constitutional or Jurisdictional Limitation on the Power of the Federal Courts to Restrain Appearing Members of a Certified Class From Pursuing Duplicative State Court Litigation | 14 |
| Conclusion | 18 |

# TABLE OF AUTHORITIES

Cases — Page

Armored Car Antitrust Litigation, In re, 472 F.Supp. 1357, (N.D. Ga. 1979), aff'd in part and remanded on other grounds, 645 F.2d 488 (5th Cir. 1981) .... 15

Atlantic Coast Line R.R. Co. v. Brotherhood of Locomotive Engineers, 398 U.S. 281 (1970) ..... 11

Bank of Heflin v. Miles, 621 F.2d 108 (5th Cir. 1980) ..... 13

Berman Denver Tramway Corp., 197 F.2d 946 (10th Cir. 1952), cert. denied, 340 U.S. 812 ..... 13

Browning Debenture Holders Committee v. DASA Corp., 605 F.2d 35 (2d Cir. 1978) ..... 13

Corrugated Container Antitrust Litigation, In re, 80 F.R.D. 244 (S.D. Tex. 1978) mandamus denied, No. 78-3684 (5th Cir., Dec. 29, 1978) ..... 2

Corrugated Container Antitrust Litigation, 1980-1 Trade Cas. (CCH) ¶ 63,163 (S.D. Tex. 1979) ..... 12

Corrugated Container Antitrust Litigation, 1981-1 Trade Cas. (CCH) ¶ 64,114 (S.D. Tex.) aff'd, 659 F.2d 1322 (5th Cir. 1981 ..... 3, 7, 8, 12

Corrugated Container Antitrust Litigation, In re, 643 F.2d 195 (5th Cir. 1981) 3, 4, 5, 7, 8, 15, 16, 17, 18

Corrugated Container Antitrust Litigation, In re, M.D.L. 310 (S.D. Tex.) ..... 1, 2, 3, 4, 5, 6, 12, 16, 17

D.G. Bland Lumber Co. v. NLRB, 177 F.2d 555 (5th Cir. 1949) ..... 11

DiGiovanni v. Camden Fire Ins. Ass'n, 296 U.S. 64 (1935) ..... 11

Dombrowski v. Pfister, 380 U.S. 479 (1965) ..... 11

General Motors Corp. Engine Interchange Litigation, In re, 594 F.2d 1106 (7th Cir.), cert. denied, 444 U.S. 870 (1979) ..... 14, 15, 16

Page

Harper Plastics, Inc. v. Amoco Chemicals Corp., 657 F.2d 939 (7th Cir. 1981) ..... 13

International Ass'n of Mach. & Aero. Wkrs. v. Nix, 512 F.2d 125 (5th Cir. 1975), cert. denied, 405 U.S. 918 ..... 13

Jacksonville Blow Pipe Co. v. Reconstruction Finance Corp., 244 F.2d 394 (5th Cir. 1957) ..... 13

Julian v. Central Trust Co., 193 U.S. 93 (1904) ..... 13

Meridian Inv. & Devel. Corp. v. Suncoast Highland Corp., 628 F.2d 370 (5th Cir. 1980) ..... 13

National Super Spuds v. New York Mercantile Exchange, 660 F.2d 9 (2d Cir. 1981) ..... 14, 16, 17

Seaboard Coast Line R.R. Co. v. Union Camp Corp., 613 F.2d 604 (5th Cir. 1980) ..... 13

Sugar Antitrust Litigation, In re, 588 F.2d 1270 (9th Cir. 1978), cert. denied, 441 U.S. 932 (1979) . 14, 17

Supreme Tribe of Ben-Hur v. Cauble, 255 U.S. 356 (1921) ..... 13, 14

Three J. Farms, Inc. v. Alton Box Board Co., 1979-1 Trade Cas. (CCH) ¶ 62,423 (D.S.C. 1978), rev'd, 609 F.2d 112 (4th Cir. 1978), cert. denied, 445 U.S. 911 (1980) ..... 5, 6

Town of Lockport v. Citizens for Community Action, 430 U.S. 259 (1977) ..... 11

United Mineworkers of America v. Gibbs, 383 U.S. 715 (1966) ..... 18

Woods Exploration & Producing Co. v. Aluminum Co. of America, 438 F.2d 1286 (5th Cir. 1971), cert. denied, 404 U.S. 1047 (1972) ..... 13, 16

Younger v. Harris, 401 U.S. 37 (1971) ..... 11

Yuba Consolidated Gold Fields v. Kilkearny, 206 F.2d 884 (9th Cir. 1953) ..... 11

| Constitution | Page |
|---|---|
| United States Constitution, Fifth Amendment | 10 |
| United States Constitution, Tenth Amendment | 10 |
| **Rules** | |
| Federal Rules of Civil Procedure, Rule 23 | 3 |
| Federal Rules of Civil Procedure, Rule 54(b) | 12 |
| Rules of United States Supreme Court, Rule 17 | 9 |
| **Statutes** | |
| Sherman Act, Sec. 1 (15 U.S.C. §1) | 2 |
| United States Code, Title 28, Sec. 1651 | 11 |
| United States Code, Title 28, Sec. 2283 | 10, 11, 12, 14 |

No. 81-1391
IN THE

# Supreme Court of the United States

October Term, 1981

THREE J FARMS, INC., *et al.*,

*Petitioners,*

*vs.*

PLAINTIFFS' STEERING COMMITTEE, *et al.*,

*Respondents.*

## BRIEF FOR THE RESPONDENT PLAINTIFFS' STEERING COMMITTEE IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT.

Respondent Plaintiffs' Steering Committee respectfully requests this Court to deny the Petition for a Writ of Certiorari for the reasons set forth below.[1]

[1]This Brief in Opposition is respectfully submitted by the undersigned members of Respondent Plaintiffs' Steering Committee and attorneys for the plaintiff certified class in the *Corrugated Container Antitrust Litigation*, M.D.L. 310 (S.D. Tex.), on behalf of the Respondent Committee and the class action plaintiffs designated by the District Court to represent the plaintiff certified class. The designated class representative plaintiffs are Adams Extract Company, Atlas Container Co., Inc., Bert Paley, Ltd., Bodines, Inc., Great Northern Packaging Corp., Grist Mill Company, Haeger Potteries, Inc., Ilikon Corporation, Jefferson Orchards, Inc., Northland Aluminum Products, Inc., Rollins Container, Inc., Sambo's Restaurants, Inc., Tierra Royal Potteries, Inc., Westside Paper Company and Winona Industries, Inc. In compliance with Rule 28.1 of this Court, please note that After Six, Inc. is a parent company of Bert Paley, Ltd. The plaintiff certified class consists of an estimated 200,000 persons in the United States who purchased corrugated containers or corrugated sheets from the defendants (or their subsidiaries or affiliates) during the period from January 1, 1960 through January 25, 1978.

## Statement of the Case.

Petitioners are members of the national plaintiff class in the multidistrict *Corrugated Container Antitrust Litigation*[2] now pending in the United States District Court for the Southern District of Texas. They seek by these proceedings to overturn an injunction issued by the District Court restraining them from prosecuting a lawsuit certain of them commenced in a South Carolina state court and from pursuing any claims related to this litigation in any forum other than the United States District Court in Texas. The injunction was granted upon the application of the defendants in M.D.L. 310 and is supported by Respondent Plaintiffs' Steering Committee, the committee of counsel appointed by the District Court to supervise the prosecution of M.D.L. 310 on behalf of the plaintiff class.

M.D.L. 310 consists of more than sixty class and individual private treble damage actions brought on behalf of purchasers of corrugated containers and sheets located throughout the United States. The plaintiffs have alleged that the defendants conspired over a period of many years to raise, fix, maintain or stabilize the prices of corrugated containers and sheets in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1. (R. 1-18.)[3]

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[2] *In re Corrugated Container Antitrust Litigation*, M.D.L. 310 (S.D. Tex.). This litigation is referred to herein as "M.D.L. 310." Citations to the Record are to Volume 2 of the record in the Court of Appeals.

[3] In September of 1978, the District Court certified a national class of all persons who purchased corrugated containers or sheets from the defendants (or their subsidiaries and affiliates) at any time during the period from January 1, 1960 to January 25, 1978. *In re Corrugated Container Antitrust Litigation*, 80 F.R.D. 244 (S.D. Tex. 1978), *mandamus denied*, No. 78-3684 (5th Cir., Dec. 29, 1978). As they have conceded, all of the Petitioners are members of this certified class. (R. 35-40.)

The class plaintiffs were able to reach settlements with all of the defendants in M.D.L. 310 except The Mead Corporation.[4] The settlements reached with the defendants provide for the payment of more than $300 million. (R. 165.)[5]

In the light of the unprecedented recovery obtained on behalf of the plaintiff class, Petitioners adopted a strategy aimed at enabling them to retain their share of the settlement proceeds obtained in M.D.L. 310 and augmenting that recovery with whatever additional amounts they might be able to obtain in other courts under state antitrust law theories. However, consistent with the usual and customary practice in cases of this sort, and as approved by the District Court and the Court of Appeals in this case on a prior appeal, the settlements required that class members who wished to share therein must release all of their claims, whether based on federal or state antitrust laws, that were or could be asserted against the settling defendants arising out of their purchases of corrugated containers and sheets during the class period.[6]

Pursuant to the terms of the settlements and Rule 23 of the Federal Rules of Civil Procedure, all class members — including Petitioners — were notified that they had a

---

[4]Mead was unwilling to settle on terms comparable with the other defendants, and on September 13, 1980, after four months of trial, the jury returned its special verdict in favor of plaintiffs and against Mead, finding that Mead had participated in a price-fixing conspiracy. See *In re Corrugated Container Antitrust Litigation*, 643 F.2d 195, 206 (5th Cir. 1981).

[5]See *In re Corrugated Container Antitrust Litigation*, 1981-1 Trade Cas. (CCH) ¶ 64,114 (S.D. Tex.), *aff'd*, 659 F.2d 1322 (5th Cir. 1981).

[6]On a prior appeal by certain of Petitioners taken from the orders and judgments approving the settlements, the Court of Appeals noted:

> The district court's memorandum order finally approving the settlements . . . includes the following statement: 'Such releases are reasonable and customary. . . . We agree with the district court that releases from state claims are generally reasonable.'

*In re Corrugated Container Antitrust Litigation*, 643 F.2d 195, 222 (5th Cir. 1981). (Citation omitted.)

choice: Any class member who remained in the class could share in the proceeds of the settlements, but would be required to release all of its claims against the settling defendants arising out of the alleged price-fixing conspiracy involving corrugated containers and sheets.[7] All class members — including Petitioners — were also given at the same time the opportunity to exclude themselves from the class, thereby preserving all of their claims against the defendants, whether predicated on state or federal law.

In response to the class notice, Petitioners not only deliberately and intentionally chose to remain in the class, they affirmatively appeared in M.D.L. 310 and attempted to obtain a ruling from the District Court to the effect that Petitioners were entitled *both* to share in the proceeds of the settlements *and* to whatever they could recover in any state court actions they desired to pursue. The District Court rejected their contention, noting that these class members could have requested exclusion from the class and separately prosecuted whatever federal and state antitrust claims they might have, but there was no warrant for their contention that they were entitled not only to their share of the settlements, but also to further litigate state antitrust law claims against the defendants based on precisely the same facts that

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[7]On the prior appeal, the Court of Appeals ruled that adequate notice of this consequence of remaining in the class was given to class members. See *In re Corrugated Container Antitrust Litigation, supra*, 643 F.2d 195, 223-24 (5th Cir. 1981). Although Petitioners had attacked the notice in those prior proceedings, they do not now challenge the notice in any respect. Indeed, the sufficiency of the class notice was not placed in issue or considered by the Court of Appeals in the decision challenged by Petitioners in these proceedings.

gave rise to M.D.L. 310. In short, Petitioners wanted to "have their cake and eat it too."[8]

Undaunted by the terms of the settlements set forth in the class notice, Petitioners indicated their intention to remain in the class and continue to prosecute a duplicative state court action in South Carolina. The South Carolina complaint was virtually a carbon copy of the Unified Complaint filed on behalf of all of the members of the plaintiff class in M.D.L. 310, including Petitioners. (R. 96-105.) As one federal judge observed, the South Carolina complaint "lifted from the Unified Complaint in M.D.L. 310 entire paragraphs without any change of language or even punctuation." *Three J Farms, Inc. v. Alton Box Board Co.*, 1979-1 Trade Cas. (CCH) ¶ 62,423 at 76,559 (D.S.C.), *rev'd on other grounds*, 609 F.2d 112 (4th Cir. 1978), *cert. denied*, 445 U.S. 911 (1980).

In the South Carolina action, Petitioners sought and obtained an *ex parte* temporary restraining order purporting to enjoin the defendants in M.D.L. 310 from agreeing to any settlements that released claims arising under the laws of South Carolina. (R. 126-27.) Moreover, Petitioners filed discovery requests that would have required the duplicative production of millions of documents already produced in M.D.L. 310. (R. 129-30.)

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[8]As the Court of Appeals observed on the prior appeal:

> Plaintiffs [Petitioners herein] had an opportunity to opt out of the class and litigate their state claims in state court; more pertinent, they knew that settlements comprising class members' state claims had been negotiated before they were asked to opt out. Plaintiffs, however, wanted to participate in the class, share in the fruits of the class' settlement negotiations, and still be free to litigate their state claims. In short, the objectors felt entitled to the bird in the hand while pursuing the flock in the bush.

*In re Corrugated Container Antitrust Litigation, supra*, 643 F.2d 195, 222 (5th Cir. 1981). (Citation omitted.)

Based on their actions, the District Court below found that Petitioners had taken and manifested an intention to continue to engage in conduct "threatening [the District Court's] exercise of its proper jurisdiction and the effectuation of its judgments in M.D.L. 310 by prosecuting duplicative litigation in the Court of Common Pleas for Spartanburg County, South Carolina, and seeking therein orders disrupting, *inter alia*, the conduct of discovery and settlement negotiations in M.D.L. 310." Pretrial Order No. 32 (Jan. 16, 1980). (R. 181-83; Petition App., at 1a-4a.)[9]

The District Court further found that the attorneys for Petitioners had taken and manifested an intention to take "actions threatening [the District] Court's exercise of its proper jurisdiction and the effectuation of its judgments, by filing and threatening to file duplicative and harassing litigation in the courts of various states and by seeking therein orders disrupting the proceedings in M.D.L. 310." *Id.*

Based on these findings and the extensive record before the Court, the District Court, on January 16, 1980, issued an injunction restraining Petitioners and their attorneys, so long as M.D.L. 310 remains pending before the District Court, from further prosecution of the South Carolina case or from instituting or prosecuting any other actions against the defendants involving allegations of unlawful restraints

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[9]In his decision rendered in the removal proceedings in the South Carolina case, Judge Chapman of the United States District Court for the District of South Carolina declared that the actions taken by Petitioners' counsel in the South Carolina state court had "shocked the conscience of the Court." *Three J Farms, Inc. v. Alton Box Board Co., supra,* 1979-1 Trade Cas. (CCH) ¶ 62,423, at 74,549 (D.S.C. 1978).

of trade in the manufacture or sale of corrugated containers or corrugated sheets in any forum other than the District Court. *Id.*

In affirming the District Court's order issuing the injunction, the Court of Appeals noted that Petitioners did not challenge the District Court's characterization of the motivation lying behind their actions. *In re Corrugated Container Antitrust Litigation*, 659 F.2d 1332, 1335 (5th Cir. 1981). Indeed, none of the factual bases for the injunction have been questioned by Petitioners at any stage of these proceedings.

Although the injunction was issued, in part, to protect and effectuate the District Court's orders and judgments approving the class action settlements, those settlements are not before this Court for review. The only properly presented question in these proceedings is whether the District Court acted within its lawful discretion when it enjoined Petitioners. The entirely distinct question as to whether the District Court abused its discretion in approving settlements that required the release of state antitrust law claims was decided on a prior appeal by a different panel of the Fifth Circuit in a decision handed down on April 3, 1981. *In re Corrugated Container Antitrust Litigation, supra*, 643 F.2d 195, 221-23 (5th Cir. 1981). The decision of the Court of

Appeals of this second question has long since become final as to these Petitioners.[10]

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[10]On the appeals taken by certain of the Petitioners and certain other class members objecting to the class action settlements, the Fifth Circuit affirmed in part, remanded in part, and reserved judgment in part. *In re Corrugated Container Antitrust Litigation*, 643 F.2d 195, 225-26 (5th Cir. 1981). As to the appeal taken by Petitioners, the Court of Appeals held:

> We affirm the district court's holding that it had the power to approve settlements that release defendants from federal *and* state claims.

*Id.* at 225. (Emphasis in original.)

Two of those final judgments, approving settlements with defendants Consolidated Packaging Corp. and Interstate Container Corp., were affirmed in all respects on the prior appeal. Based upon the district court's additional findings of fact and conclusions of law, *In re Corrugated Container Antitrust Litigation*, 1981-1 Trade Cas. (CCH) ¶ 64,114 (S.D. Tex. 1981), the Fifth Circuit subsequently affirmed the District Court's approval of all of the settlements which were subject to additional appellate proceedings. *In re Corrugated Container Antitrust Litigation*, 659 F.2d 1322 (5th Cir. 1981). These additional proceedings related solely to objections raised by class members other than Petitioners. Furthermore, Petitioners did not appeal from certain of the settlement orders and judgments at all. The appellants from the settlement orders and judgments included Petitioners London Dry, Ltd., Tabor City Foods, Inc., Shapiro & Son Bedspread Corp., U.S. Textile Corp., and Troy H. Cribb & Sons, Inc. The appellants from the January 25, 1980 final judgments included all of the foregoing, except Shapiro & Son Bedspread Corp. Petitioners Three J Farms and the South Carolina Peach Growers Association did not appeal at all from the settlements. Moreover, no appeal was taken by any of Petitioners from the February 8, 1980 final judgment dismissing the claims of the class against defendant Stone Container Corporation. Thus, certain of the settlements, all of which required the release of state antitrust law claims, were never challenged on appeal by certain of the Petitioners.

In any event, as noted above, the affirmance of all of the settlements is now final as to all of the Petitioners.

## REASONS FOR DENYING THE WRIT.

The Petition fails to state any reason for granting certiorari. Rule 17 of this Court provides:

> 1. A review on writ of certiorari is not a matter of right, but of sound judicial discretion, and will be granted only where there are special and important reasons therefor. The following, while neither controlling or fully measuring the court's discretion, indicate the character of reasons which will be considered: . . .
>
> (a) When a federal court of appeals has rendered a decision in conflict with the decision of another federal court of appeals on the same matter; or has decided a federal question in a way in conflict with a state court of last resort; or has so far departed from the accepted and usual course of judicial proceedings, or so far sanctioned such a departure by a lower court, as to call for an exercise of this Court's power of supervision. . . .
>
> (c) When a state court or a federal court of appeals has decided an important question of federal law which has not been, but should be, settled by this Court, or has decided a federal question in a way in conflict with applicable decisions of this Court.

Petitioners have shown no conflict among the circuits, no conflict with the decisions of this Court, no important question of federal law that this Court has not previously decided, and certainly no unusual departure from the normal course of judicial proceedings.

To the contrary, it is respectfully submitted that the only question which could properly be presented in these proceedings, namely, whether the District Court acted within its lawful discretion when it enjoined Petitioners from engaging in conduct designed to directly challenge its orders and judgments and to disrupt the administration of the com-

plex multidistrict litigation pending before that court, raises no issue worthy of review by this Court. The power of the District Court to take effective action to protect its judgments and to preserve its jurisdiction is unquestionable. Whether the Court of Appeals correctly held that the District Court acted within its discretion in so doing is a matter which necessarily depends on the particular facts of the case, and presents no question of general importance.

Petitioners fail to come to grips with this question and instead seek to raise a series of issues concerning the propriety of the release of state law claims pursuant to the settlements. Those issues are, however, not properly before this Court in these proceedings because, as shown above, they were not presented on this appeal, but rather were decided by a different panel of the Court of Appeals on a prior appeal.

In any event, Petitioners fail to show any reason why this Court should review the decision of the Court of Appeals which held that the injunction is not barred by 28 U.S.C. § 2283, does not violate any of Petitioners' rights under the Fifth or Tenth Amendments, and is otherwise within the jurisdiction of the District Court.

**1. Petitioners Have Not Attempted to Show a Conflict Among the Circuits and Have Otherwise Failed to Raise Any Questions Worthy of Review Concerning the Application of 28 U.S.C. § 2283.**

The decision of the Court of Appeals is in keeping with the controlling decisions of this Court and raises no important, unsettled questions concerning the application of the Anti-Injunction Statute, 28 U.S.C. § 2283. Petitioners have not even attempted to demonstrate the existence of any conflict among the circuits on this question.

It is well established that a federal court may, under the All Writs Act, 28 U.S.C. § 1651, enjoin litigants before the court from simultaneously prosecuting duplicative actions, at least where, as here, the claims duplicate those asserted in complex litigation and the prosecution of the duplicative actions would seriously impair the ability of the federal court to decide the case before it. *Atlantic Coast Line R.R. Co. v. Brotherhood of Locomotive Engineers*, 398 U.S. 281, 295 (1970); *Cf. DiGiovanni v. Camden Fire Ins. Ass'n.*, 296 U.S. 64, 70 (1935).

The Anti-Injunction Statute, 28 U.S.C. § 2283, does not bar such relief.[11] The federal courts may act in aid of their jurisdiction to prevent litigants who have appeared before them from engaging in duplicative litigation that introduces the potential for mischief that would result from the issuance of inconsistent orders by different courts.[12]

In this case, the Court of Appeals found itself in agreement with the District Court's assessment that "the actions of [Petitioners] in pursuing substantially similar state law claims in the South Carolina court would be a challenge to

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[11]§ 2283 provides:

> A court of the United States may not grant an injunction to stay proceedings in a state court except as expressly authorized by an Act of Congress, or where necessary in aid of its jurisdiction, or to protect or effectuate its judgments.

[12]The possibility of conflicting orders directed to the same litigants justifies enjoining the prosecution of duplicative litigation. *See Yuba Consolidated Gold Fields v. Kilkearny*, 206 F.2d 884 (9th Cir. 1953) (multiple actions in state court enjoined by federal court where common questions of law and fact overlapped); *D.G. Bland Lumber Co. v. NLRB*, 177 F.2d 555, 558 (5th Cir. 1949) (injunction against state court proceedings proper in order to prevent parties from being subjected to possible punishment by state court for obeying federal court order); *see also Town of Lockport v. Citizens for Community Action*, 430 U.S. 259, 264 n. 8 (1977). It should also be noted that this Court has held that § 2283 does not apply at all to injunctions that relate to state actions that have not yet been commenced. *Dombrowski v. Pfister*, 380 U.S. 479, 482 n. 2 (1965); *Cf. Younger v. Harris*, 401 U.S. 37, 41 (1971).

[the District Court's] jurisdiction." *In re Corrugated Container Antitrust Litigation, supra*, 659 F.2d 1332, 1334 (5th Cir. 1981). The Court of Appeals noted the potential for conflicting orders had actually been realized in this case when the South Carolina state court issued a temporary restraining order purporting to block the right of the parties to settle M.D.L. 310, without first obtaining the permission of the state court. This restraining order, if enforced, "would clearly interfere with the multidistrict court's ability to dispose of the broader action pending before it." *In re Corrugated Container Antitrust Litigation, supra*, 659 F.2d 1332, 1334-35 (5th Cir. 1981).

The injunction was also appropriately issued under another express exception specified in 28 U.S.C. § 2283, which permits a federal court to enjoin proceedings in a state court where "necessary . . . to protect or effectuate its judgments."

On December 21, 1979, prior to the issuance of the injunction, the District Court entered its Pretrial Order No. 31, approving settlements with many of the defendants in M.D.L. 310, including most of the companies named as defendants in the South Carolina state court proceeding. *In re Corrugated Container Antitrust Litigation*, 1980-1 Trade Cas. (CCH) ¶ 63,163 (S.D. Tex. 1979). Those settlements each required that class members not requesting exclusion from the class, including Petitioners, must release all of their antitrust claims against the defendants, whether arising under state or federal law, based on claims that were or could have been asserted in M.D.L. 310. *Id.*

Pursuant to that Order and the terms of the settlements, on January 25, 1980 and February 8, 1980, the District Court entered separate final judgments pursuant to Rule 54(b) of the Federal Rules of Civil Procedure dismissing

with prejudice all of the claims of plaintiff class members against the defendants.[13]

By attempting to further prosecute their virtually identical state antitrust law claims against the settling defendants in the South Carolina state courts and by threatening to initiate similar actions in other state courts, Petitioners clearly sought to relitigate issues which had been resolved by the federal court's orders and judgments.

The authority and even duty of the federal courts to enjoin the relitigation of their orders and judgments is well established by the decisions of this Court and the lower federal courts.[14] For example, in *Supreme Tribe of Ben-Hur v. Cau-*

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[13]Each of those judgments provides in virtually identical language as follows:

> Pursuant to Rule 23 of the Federal Rules of Civil Procedure and said settlement with Settling Defendant, this Court hereby dismisses, with prejudice and without costs, all claims of the members of the Plaintiff Class, as hereinafter defined, except the individual claims of any named plaintiff or other member of the Plaintiff Class who is specified in paragraph 4 below as having duly requested exclusion from the Plaintiff Class, against Settling Defendant only, arising under the antitrust laws of the United States or of any state or other jurisdiction, of any similar statutory or common law, which have been, might have been, are now or could be asserted in these actions in connection with corrugated containers and corrugated sheets or which relate to or arise out of the unlawful conspiracy to fix, raise, maintain or stabilize the prices of corrugated containers or corrugated sheets alleged in the Unified and Consolidated Complaint, as amended, on file herein.

[14]*Julian v. Central Trust Co.*, 193 U.S. 93, 112 (1904); *International Ass'n. of Mach. & Aero. Wkrs. v. Nix*, 512 F.2d 125, 130-131 (5th Cir. 1975), *cert. denied* 405 U.S. 918; *Harper Plastics, Inc. v. Amoco Chemicals Corp.*, 657 F.2d 939 (7th Cir. 1981); *Meridian Inv. & Devel. Corp. v. Suncoast Highland Corp.*, 628 F.2d 370 (5th Cir. 1980). *Bank of Heflin v. Miles*, 621 F.2d 108, 112-113 (5th Cir. 1980); *Seaboard Coast Line R.R. Co. v. Union Camp Corp.*, 613 F.2d 604, 608 (5th Cir. 1980); *Browning Debenture Holders Committee v. DASA Corp.*, 605 F.2d 35 (2d Cir. 1978); *Woods Exploration & Producing Co. v. Aluminum Co. of America*, 438 F.2d 1286, 1311 (5th Cir. 1971), *cert. denied*, 404 U.S. 1047 (1972); *Jacksonville Blow Pipe Co. v. Reconstruction Finance Corp.*, 244 F.2d 394 (5th Cir. 1957); *Berman Denver Tramway Corp.*, 197 F.2d 946, 950 (10th Cir. 1952), *cert. denied*, 340 U.S. 812.

*ble*, 255 U.S. 356 (1921), this Court held that a district court erred in refusing to grant an injunction in a class action case to restrain certain class members from relitigating in state court issues which had been concluded by the federal court's judgment.

Thus, no question worthy of review has been or could be presented concerning the application of § 2283 to this case.

**2. No Important Question Has Been Presented for Review and No Conflict Among the Circuits Has Been Shown Concerning Any Asserted Constitutional or Jurisdictional Limitation on the Power of the Federal Courts to Restrain Appearing Members of a Certified Class From Pursuing Duplicative State Court Litigation.**

Petitioners claim that the decision of the Court of Appeals sustaining the injunction is in conflict with decisions of the Second, Seventh and Ninth Circuits. (Pet. at 19-20.) In fact, none of the decisions cited by Petitioners to establish the supposed "conflict" decide anything about the propriety of a federal court injunction against state court proceedings. Two of the cases cited, *In re General Motors Corp. Engine Interchange Litigation*, 594 F.2d 1106 (7th Cir.), *cert. denied*, 444 U.S. 870 (1979) and *National Super Spuds v. New York Mercantile Exchange*, 660 F.2d 9 (2d Cir. 1981), decide questions concerning the approval of class action settlements. The third case, *In re Sugar Antitrust Litigation*, 588 F.2d 1270 (9th Cir. 1978), *cert. denied*, 441 U.S. 932 (1979), deals with the propriety of the removal of a state court action to federal court. These cases arose out of entirely different factual and legal contexts and present no conflict at all with the Fifth Circuit's decision.

In *General Motors*, the Seventh Circuit reversed the approval of an unusual settlement that purported to refuse class members the right to reject the proposed settlement and to preserve their rights under federal and state law. *Id.* at 1133-34. The Seventh Circuit made it abundantly clear, however, that class members who accepted the settlement package — like Petitioners here who chose not to opt out from the class in this case — were properly required to release their state as well as federal claims:

> If the subclass members signs a release he will receive the settlement package and his [federal] claim will be dismissed . . . the signed release, of course, operates to preclude the accepting subclass member from proceeding on any state claims he may have against General Motors.

*Id.* at 1133.[15]

As the Fifth Circuit noted on the prior appeal concerning settlements in this case, the *General Motors* decision may be read as standing for the proposition "that a [federal] court can approve a settlement extinguishing state claims not before it if the class members have been notified that their participation in the class or the settlement might result in release of their state claims." *In re Corrugated Container Antitrust Litigation, supra*, 643 F.2d 195, 221 n.40 (5th Cir. 1981).

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[15]As one court has noted, in *General Motors*, "subclass members were compelled to waive their federal right of action upon a decision to opt out." *In re Armored Car Antitrust Litigation*, 472 F.Supp. 1357, 1380 n.18 (N.D. Ga. 1979), *aff'd in part, reversed in part and remanded on other grounds*, 645 F.2d 488 (5th Cir. 1981). That was obviously not the case here. These Petitioners could have opted out with no penalty whatsoever and thereby preserved all of the federal and state claims they may have had.

The Fifth Circuit then determined that the procedures followed in this case fully comported with the *General Motors* decision.

> In the case before us, the class notice provided class members with the information that the court had preliminarily approved settlements releasing federal and state claims. Armed with that knowledge, the objectors opted to participate in the class. Thus, the district court's dismissal of the state claims is consistent with our reading of the General Motors case. We thus have no occasion to decide whether we agree with the Seventh Circuit that a federal court can be jurisdictionally barred in some circumstances from releasing state claims not before it.

643 F.2d at 221-222.

The opinion of the Second Circuit in *National Super Spuds v. New York Mercantile Exchange*, 660 F.2d 9 (2d Cir. 1981), is also not in conflict with the Fifth Circuit's decision. In *National Super Spuds*, by contrast with M.D.L. 310, a settlement required class members to release separate and independent claims for losses sustained beyond the class period as a result of claims expressly excluded from the certified class.[16]

The case is distinguishable from the situation here on at least two other grounds. In the first place, the Court of Appeals found that class members had been given inadequate notice that a consequence of remaining in the class

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[16]Unlike the state antitrust law claims at issue here, which would likely be foreclosed by the judgments in this case under principles of *res judicata*, the additional claims covered by the settlement in *National Super Spuds* would not have been merged into and barred by a final judgment. *Compare, National Super Spuds v. New York Mercantile Exchange, supra*, 660 F.2d 9, 17-18, *with Woods Exploration & Producing Co. v. Aluminum Co. of America, supra*, 438 F.2d 1286, 1315 (5th Cir. 1971), *cert. denied*, 404 U.S. 1047 (1972).

might be the forced relinquishment of such post-class period claims. *Id.*, 660 F.2d at 17. Here, by contrast, class members were adequately advised that they would be required to give up their state antitrust law claims if they chose to remain in the class. *In re Corrugated Container Antitrust Litigation, supra*, 643 F.2d 195, 222 (5th Cir. 1981).

Second, the claims Petitioners sought to assert in various state courts are based on precisely the same nucleus of operative facts which gave rise to the federal class action. The state antitrust law claims sought to be asserted by these Petitioners are based on precisely the same allegations of price-fixing, relate to the same time period, and are made against parties all of whom are defendants in M.D.L. 310. The Second Circuit observed that a class action settlement requiring the release of such claims is perfectly appropriate.

> We assume that a settlement could properly be framed so as to prevent class members from subsequently asserting claims relying on a legal theory different from that relied upon in the class action complaint but depending upon the very same set of facts.

*Id.*, 668 F.2d at 9, 18 n.7.

Last, the Ninth Circuit's decision in the *Sugar Antitrust Litigation, supra*, only decided whether a state court antitrust action brought exclusively on behalf of indirect purchasers was removable to federal court. The state law claimants in *Sugar*, by contrast with Petitioners, were not members of the federal class at all. The Ninth Circuit observed that they had "no federal claims whatsoever." *In re Sugar Antitrust Litigation, supra*, 588 F.2d 1270, at 1274.

Contrary to Petitioners' assertions, nothing prevented the federal court from asserting jurisdiction over Petitioners' state law claims. The federal courts can clearly assume pendent jurisdiction over state law claims based on the same

facts as a federal antitrust claim. *United Mineworkers of America v. Gibbs*, 383 U.S. 715, 721-29 (1966).

Petitioners' arguments based on the fifth and tenth amendments are, as two different panels of the Fifth Circuit found, "frivolous." *See In re Corrugated Container Antitrust Litigation, supra*, 643 F.2d 195, at 222, 659 F.2d 1332, 1336 (5th Cir.). As the Fifth Circuit held, the injunction works no deprivation of property or interference with the proper domain of the states.

The cases cited by Petitioners fail to show any "conflict" among the circuits or the existence of any question worthy of this Court's review. Those cases do not suggest any basis to hold that the District Court did not act with in its lawful discretion, and in keeping with its responsibilities to fairly and effectively administer the complex multidistrict class action pending before it, by issuing an injunction restraining the prosecution of duplicative and disruptive state law proceedings by members of the class. Thus, there is simply no basis for the claim that the District Court lacked power to issue the injunction.

**Conclusion.**

No reason having been shown why this Court should issue its writ of certiorari, it is respectfully submitted that the Petition should be denied.

Dated: March 19, 1982

Respectfully submitted,

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# Petitioner's Reply Brief

81-1891

Supreme Court, U.S.
FILED
MAR 31 1982
ALEXANDER L. STEVAS
CLERK

IN THE

# Supreme Court of the United States

OCTOBER TERM, 1981

THREE J FARMS, INC., et al.,
*Petitioners,*

v.

PLAINTIFFS' STEERING COMMITTEE, et al.,
*Respondents.*

## PETITIONERS' REPLY

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## TABLE OF CONTENTS

*Page*

Additional Facts Brought To The Attention Of The Court. 1

Reply Points of Petitioners ..... 3

Reply Point One ..... 3

Reply Point Two ..... 4

Reply Point Three ..... 5

Conclusion ..... 6

Addendum ..... 7

## CASES CITED

*CFS Continental, et al. v. Adams Extract, et al.* ..... 1

*Columbia Plaza Corp. v. Security National Bank,* 525 Fed. 2nd 620 (1975). ..... 4

*Klein v. Adams & Peck,* 436 Fed. 2nd 337 (1971). ..... 4

*Standard Screws Antitrust Litigation,* MDL 443 ..... 2

IN THE
SUPREME COURT OF THE STATE OF NEW YORK

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THREE J FARMS, INC., et al.,
*Petitioners,*

v.

PLAINTIFFS' STEERING COMMITTEE, et al.,
*Respondents.*

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## PETITIONERS' REPLY

The undersigned has received a response to the Petition for a Writ of Certiorari filed herein to which a reply appears to be necessary to apprise the Court of various matters which may be material in connection with the Court's final determination.

## ADDITIONAL FACTS BROUGHT TO THE ATTENTION OF THE COURT

Subsequent to the filing of the present Petition for a Writ of Certiorari, the undersigned has been apprised of a determination by Mr. Justice White, on February 24, 1982 which, in the matter of *CFS Continental, et al. v. Adams Extract, et al.* the time for filing a Petition for a Writ of Certiorari was extended to March 31, 1982.

The CFS Petition will involve objections to the settlement approval of this underlying litigation (in which the injunction petitioned against herein was granted) and the undersigned intends to cross-petition in that matter.

It thus appears to the undersigned that this Petition and the contemplated *CFS Continental* petition should be considered together by this Court.

Also annexed to this Reply is a copy of a letter received from the Attorney General of the State of Colorado (one of the "full purchase price" states having antitrust laws similar to the laws of the State of South Carolina which letter expresses the concern of the State of Colorado with the injunction issued by the District Court and petitioned against herein.) The significant portion of the letter of the Colorado Attorney General reads as follows:

> "*** Notwithstanding the preceding, we are troubled by the Fifth Circuit's decision allowing Class Representatives in Federal litigation to waive, over objection, state antitrust claims which have not been brought in the litigation.***"

Indeed, in the *Standard Screws Antitrust Litigation,* MDL 443, Chief Judge Caffrey of the United States District Court for the District of Massachusetts, based upon the objections to a broad Class Certification in that Federal litigation, specifically exempted from the certified class, State Antitrust Claims which had not been pleaded by the plaintiffs in that litigation.

These facts, it is submitted, require this Court to consider the problem presented which is a significant one involving administration of the antitrust laws and should be addressed by this Court.

## REPLY POINTS OF PETITIONERS

**1. STATE ANTITRUST CLAIMS WERE NOT PLEADED BY THE PARTIES IN THE TEXAS FEDERAL LITIGATION AND THIS IS CONCEDED.**

**2. PENDENT JURISDICTION OF STATE ANTITRUST CLAIMS IS ONLY AVAILABLE IF THERE IS A FEDERAL CLAIM TO ATTACH IT TO AND IN SUCH EVENT ONLY WITH THE CONSENT OF THE FEDERAL DISTRICT JUDGE. IN THIS CASE, PLAINTIFFS PLEADED NO FEDERAL ANTITRUST CLAIMS NOR COULD THEY HAVE ANY ASSURANCE THAT THE FEDERAL DISTRICT JUDGE WOULD EXERCISE HIS DISCRETION TO PERMIT SUCH CLAIMS TO BE PLEADED. THE SOUTH CAROLINA STATE COURT, ON THE OTHER HAND, HAD CLEAR JURISDICTION OF THE MATTER.**

**3. THERE WAS NO ATTEMPT TO INTERFERE WITH THE JURISDICTION OF THE FEDERAL DISTRICT COURT TO DETERMINE THE FEDERAL ANTITRUST CLAIMS PLEADED IN THIS CASE.**

## REPLY POINT ONE

The respondents concede, as they must, that the plaintiffs did not plead state antitrust claims in their Complaint. They further concede that while plaintiffs in "full purchase price" states would receive 100% of their purchase price for the price-fixed goods, the settlements made in the class suit involve a fraction (less than 5%) of such

sales. The merits of the matter are clear in that one of the defendants has been found guilty after trial by a jury of unlawful price-fixing. Thus, the settlement involved is clearly unreasonable under "full purchase price" state standards.

Thus, the first action filed in which state full purchase price antitrust claims were pleaded, was the South Carolina State Court action. Thus, even assuming the propriety of an injunction against the later filed suit, it would be the South Carolina State Court that could enjoin disposal of these claims in any other jurisdiction but its own (as it, in fact, did) and not the Federal District Court which never had these claims before it.

In general, injunctions against other litigation are sparingly given (even aside from the direct prohibition of the "antiinjunction act"). See *Klein v. Adams & Peck,* 436 Fed. 2nd 337 (1971).

Also, of course, in general, the first action filed is the action that normally goes forward (See *Columbia Plaza Corp. v. Security National Bank,* 525 Fed. 2nd 620 (1975).

## REPLY POINT TWO

The Respondents, and the Court of Appeals, have both taken the position that the petitioners would be adequately protected despite the federal injunction and the prior institution of state court proceedings, by merely placing the state antitrust claims in the Federal proceeding as "pendent claims". This, it is submitted, is just not so. In the first place, since the Federal proceedings were in Texas, the Texas District Court is not a "court of competent jurisdiction within the State of South Carolina" as required by the South Carolina antitrust laws. In addition, since the petitioners pleaded no Federal antitrust claims, there just was no Federal claim involved to which the State antitrust claims could be made pendent to. Then, of

course, the Texas Federal Court had complete discretion to *deny* the interposition of these State antitrust claims since "pendent jurisdiction" is a matter of *discretion and not a matter of right.*

Finally, it is submitted that where a suit is already pending in a State Court, the Tenth Amendment to the Constitution of the United States bars a Federal court from taking pendent jurisdiction of a state antitrust claim under such a factual pattern.

## REPLY POINT THREE

The Respondents and the Court of Appeals also take the position that the prosecution of the State antitrust claims in the South Carolina State Courts by the Petitioners was, in some way, frustrating a settlement of the co-pending Federal antitrust litigation. This position, if sustained by this Court, would mean that no State antitrust claim could be prosecuted if a Federal class action was pending outside of the Federal Court having jurisdiction of the Federal proceeding. Such a result would, in effect, nullify State antitrust laws since no State Court would have any jurisdiction to *independently* try claims brought under their own laws and would, in effect, mean that Federal District Courts would be the Courts construing all State antitrust statutes. This absurd result follows from the determination under review here.

Petitioners merely objected to a *settlement* of State antitrust claims which were not pleaded or considered in the Federal antitrust litigation and obtained a State Court injunction against this result. Petitioners took no action to prevent any settlement of the *Federal Antitrust Claims* presented in the Federal litigation and this fact is conceded by all parties.

## CONCLUSION

**THE PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT SHOULD BE IN ALL RESPECTS GRANTED.**

Respectfully submitted,

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*Attorneys for Petitioners*

## ADDENDUM

[Letterhead of The State of Colorado, Department of Law, Office of the Attorney General]

February 17, 1982

I. Walton Bader
Bader & Bader Law Offices
65 Court St.
White Plains, NY 10601

Re: *Three J. Farms, Inc. v. Plaintiff's Steering Committee U.S. Sup. Ct., Docket No. 81-1391*

Dear Mr. Bader:

Thank you for providing us with a copy of your petition for *certiorari* in the above-referenced action. We had not realized that Kansas, Tennessee and South Carolina have so-called "full purchase price" remedial provisions in their antitrust statutes somewhat similar to Colorado's. Thus, we are unaware what interpretations, if any, may have been given such provisions by the courts of those states.

Colorado's statutory section has not been construed by the state courts, and on its face could be read to mean only that a wrongdoer must disgorge any "benefit" (*i.e.*, profit) obtained as a result of an antitrust violation. Likewise, it is unclear whether Colorado's version of this statutory provision would apply in the case of indirect as well as direct purchases. In the foregoing respects, then, our statute may differ from those of South Carolina and the other states.

Notwithstanding the preceding, we are troubled by the Fifth Circuit's decision allowing class representatives in federal litigation to waive, over objection, state antitrust claims which have not been brought in the litigation. Accordingly, should another state prepare an *amicus* brief in support of your petition for certiorari, we would be happy to review it with a view toward joining in. Because our economic and personnel resources for antitrust are very limited at present, we could not undertake the more active role of authoring such a brief ourselves.

Thank you again for bringing this matter to our attention. We would be pleased to be kept apprised of developments.

Very truly yours,

s/ T.P. McMahon
Thomas P. McMahon
Assistant Attorney General
Chief, Antitrust Unit

TPM:kc

cc: Richard F. Hennessey
Deputy Attorney General